

AQUATIC PLANT AND ALGAE MANAGEMENT GENERAL PERMIT

FACT SHEET

APPENDIX A – RESPONSE TO PUBLIC COMMENTS

National Pollutant Discharge Elimination System (NPDES) and
State Waste Discharge General Permit

March 1, 2006

Table of Contents

Introduction.....	5
General Comments.....	5
Specific Comments	84
S1. Permit Coverage.....	84
Permit Coverage.....	84
Eradication Projects	87
Control Projects	89
High Use Areas	90
Percentage of Treatment Allowed for Control Projects.....	92
Lake Washington/Lake Sammamish/Lake Union-Portage Bay	95
Property Lines	95
Algae Control.....	96
Roadside and Ditchbank Activities.....	96
Activities Excluded from Permit Coverage	96
Geographic Area Covered.....	97
Additional Requirements for Sensitive, Threatened, or Endangered Plants.....	98
S2. Permit Application Requirements.....	100
Who is the Permittee?	100
60 Day Requirement	102
SEPA Requirements.....	104
Public Notice Requirements	105
Permit Coverage Timeline	107
Fees	111
Denial of Coverage	112
S3. Compliance with Standards	113
S4. Wetlands	115
Wetlands-Control Projects.....	115
S5. Restrictions on the Application of Products	116
Short-Term Modification	116
Adjuvants	117
Table 2	119
Table 6	121
S6. Notification and Posting Requirements	121
Ecology Notification Requirements.....	121
S7. Monitoring Requirements	131
S8. Sampling and Analytical Procedures	136
S9. Reporting and Recordkeeping Requirements	137
Annual Reporting.....	137
S10. Spill Prevention and Control.....	138
Spill Prevention.....	138
S11. Conditional Approval For the Use of Products Not Specified in the Current Permit.....	139
S12. Mitigation for Sensitive, Threatened, or Endangered Plants: Control Projects.....	140
Plant Surveys	140
General Conditions	143

Appendix A.....	145
Appendix B.....	146
Appendix C.....	146
Oral Testimony	147
Testimony From Public Hearing in Centralia, WA	147
Testimony From Public Hearing in Spokane, WA	150
Testimony From Public Hearing in Lynnwood, WA.....	151
List of Commenters.....	161

General Comments Section

Introduction

The Department of Ecology (Ecology) published the draft Aquatic Plant and Algae Management General Permit on December 7, 2005 for public comment. The public comment period, originally scheduled to close on January 20, 2006, was extended until January 27, 2006. During the comment period, Ecology conducted three public hearings to take oral testimony. Ecology also took public comment via letter and email, receiving written testimony from over 700 interested parties.

Ecology considered all the comments in preparing the final permit. This Response to Comments documents Ecology's response to each commenter. The document is divided into three sections: General Comments on the permit; Specific Comments, responding to section-specific comment received; and Testimony Comments. This document becomes part of the permanent administrative record of issuance of the Aquatic Plant and Algae Management General Permit.

General Comments

1. With this draft permit, Ecology is making clear its intention to no longer issue NPDES permits for aquatic plant and algae management, but instead to issue state waste discharge permits. Ecology's reasoning is that state law directed Ecology to modify or rescind aquatic NPDES permits if the Talent decision was modified or overturned; the EPA issued a rule stating they are not required, or the legislature took action. While the Talent decision has been slightly modified, the modification is certainly not cause for revocation of the permits. Furthermore, EPA has not issued a rule on this matter. The law is clear that NPDES permits are required for aquatic pesticide applications and Ecology should continue to issue them. (Commenter #696, Washington Toxics Coalition)

Response: The Washington Department of Ecology (Ecology) has reconsidered its decision to issue this permit as a state waste discharge permit. Issuing the permit as a state waste discharge permit does not allow Ecology to comply with the 2001 ruling of the Ninth Circuit Court of Appeals in the *Headwaters Inc. v. Talent Irrigation District* case. Ecology's preliminary decision to issue a state waste discharge permit was based on Ecology's understanding that EPA would promulgate rules by January 2006 that would eliminate the requirement for an NPDES permit when pesticides are applied according to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) labels. EPA still has not adopted its rules. Given EPA's failure to timely adopt its rules, and comments Ecology received on the draft state waste discharge permit, Ecology has decided to issue this permit as a joint National Pollutant Discharge Elimination System (NPDES) General permit and state waste discharge general permit, under both federal and state authority. If EPA finalizes the rule that exempts the application of aquatic pesticides from NPDES requirements, Ecology will comply with RCW 90.48.465(6) and will not require NPDES permits for the application of aquatic pesticides.

2. The state waste discharge rule, at WAC 173-216-020, requires that discharges be prevented unless "it is clear that overriding considerations of public interest will be served." Thus, according to the rule, pesticides may not be applied to waters unless it is clear that one, other

methods of addressing weed problems are not feasible, and two, there is not significant risk to human health and aquatic organisms. (Commenter #696, Washington Toxics Coalition)

Response: The regulation actually provides that wastes and other materials shall not be allowed to enter waters of the state where the entry will reduce the existing quality of the waters unless it is clear that overriding considerations of the public interest will be served. Our legislature has determined that the control and eradication of noxious and nuisance weeds is a matter of significant public interest. The control of noxious and nuisance weeds will often improve the quality of state waters. In addition, Ecology has placed conditions in the permit that will protect the existing quality of state waters that are treated under this permit.

3. The repeated attempts of the Queen City and Seattle Yacht Clubs to apply pesticides in Portage Bay provide an excellent example of the need for a different approach. In this case, private organizations are seeking to apply pesticides to control vegetation that they feel impedes their members' recreation. Many neighbors, however, have strongly opposed the pesticide applications, and have successfully applied other techniques to control the noxious weeds. Here, alternative control methods are clearly feasible, and there is no need to risk impacts to people or aquatic organisms. (Commenter #696, Washington Toxics Coalition)

Response: Comment letters from the Queen City and Seattle Yacht Clubs indicate that they have concerns with safety and navigation as well as recreation. Yacht Clubs have tried using non-chemical control methods to control vegetation in their marina areas. They indicate that these methods have not been as effective or as cost-effective as using chemical control. Clearly there is a difference of opinion between the Yacht Clubs and their neighbors about the use of herbicides for aquatic plant management.

4. Under the current structure of the permit and application process, there is no way for Ecology to make these important determinations. There is no application of the requirements for "all known, available, and reasonable methods to prevent and control the discharge of wastes into the waters of the state" ("AKART"). Therefore, Ecology makes no determination whether alternative control methods are feasible. Further, Ecology's consideration of public input is limited to whether "the applicant meets the requirements for coverage." This appears not to include the broad consideration of public interest required by the rule. (Commenter #696, Washington Toxics Coalition)

Response: This permit regulates the discharge of pesticides/nutrient inactivation products to lakes for the management of aquatic plants and algae. For this permit, the requirements of AKART are met by defining how, when, and which chemicals are applied to waters of the state. Not all federally registered aquatic products are allowed to be applied to state waters under this permit. AKART is also met through the use of Best Management Practices such as limiting the number of acres of the littoral zone treated at any given time, and limiting the number of treatments allowed per season in a given water body. Compliance with the FIFRA label further limits the overuse of products and the non-target impacts.

5. State law only requires that Ecology create a permit to allow control of noxious weeds. Therefore, native plants should be excluded from this permit. Ecology should not allow native plants to be killed under this permit. Native plants provide important habitat and are necessary for our lake ecosystems. Noxious weeds may pose a threat to our lakes, and native plants are vital to fighting off noxious weed invasions. How is it consistent with the public interest to allow application of potentially harmful pesticides to lakes for control of native plants? (Commenter #696, Washington Toxics Coalition)

Response: State law only Ecology to issue a permit to control noxious weeds, however, state law does not limit Ecology's authority to control pesticides use for other plants that may adversely impact beneficial uses of the water bodies. Because of the stress placed on water bodies by increasing urbanization and nutrient loading, some native plant species have demonstrated the ability to become invasive. Some native plant species can displace other native species and create a monoculture in the littoral zone, often creating worse conditions for fish and other aquatic life. Findings in RCW 90.48.447 state that "once established, these nuisance and noxious aquatic weeds can colonize the shallow shorelines and other areas of lakes with dense surface vegetation mats that degrade water quality, pose a threat to swimmers, and restrict use of lakes." Ecology believes that controlling native aquatic plant growth in compliance with this permit allows for the protection of water quality as well as beneficial uses. The beneficial uses listed in Washington Administrative Code (WAC) Chapter 173-201A include recreation and aesthetics. Therefore the treatment of native plants is conditioned by and allowed under this permit.

6. We are concerned that the permit continues to allow the use of pesticides where non-chemical alternatives would be effective, cost-competitive, and more protective of health and aquatic organisms. With this permit, Ecology cedes the ability to deny coverage to inappropriate applications-instances where alternatives are available, where pesticides have been tried and not worked, or where treatment is purely for aesthetic reasons. (Commenter #696, Washington Toxics Coalition)

Response: This permit regulates the application of pesticides to waters of the state. Ecology provides information, education, and technical assistance about non-chemical alternatives through other programs. Aesthetics are protected as a beneficial use of a water body under WAC 173-201A, and will continue to be considered when permitting the application of aquatic pesticides. Ecology issues this permit to condition the use of pesticides to both protect beneficial uses and water quality.

7. When non-chemical methods are available and effective, Ecology should not be approving the use of pesticides in our lakes. (Commenter #696, Washington Toxics Coalition)

Response: See response to Comment #6.

8. A section must be added to this permit that requires anyone who wants to make an application of pesticides to a lake determine non-chemical methods and review these options with Ecology. This process should be conducted not just by the pesticide applicator but by

the sponsoring lake group. (Commenter #696, Washington Toxics Coalition)

Response: Please see responses to Comments #4 and 6.

9. Ecology must retain the ability to reject applications that are unnecessary; Ecology's job is to protect our lakes, and the agency must be able to deny permit coverage for lakes where non-chemical methods are possible. (Commenter #696, Washington Toxics Coalition)

Response: Please see response to Comment #6.

10. Without the IAVMP requirements, we are very concerned that requirements for AKART are not being met under this permit. (Commenter #696, Washington Toxics Coalition)

Response: The requirements for AKART are being met by restricting the use of pesticides allowed under this general permit. By regulating when and how pesticides are applied, in addition to label requirements, Ecology has met the conditions of AKART. Please refer to the response to Comment #4.

11. The permit should mandate analysis of options to ensure that the alternative with the least impact on water quality and health is being used. (Commenter #696, Washington Toxics Coalition)

Response: This permit only regulates the use of chemical control methods in lakes. Please see responses to Comments #4 and 6.

12. While we believe that the best way to make AKART determinations is on an individual basis, Ecology could prepare a generic analysis for frequently encountered scenarios, for example for the weeds that applicants most commonly seek to control, provided that this is coupled with Ecology review and sign-off on an individual application basis. Ecology could then develop conditions for these scenarios based on the analysis; for example, that milfoil should be controlled using mechanical means unless there is a lake-wide eradication project, etc. (Commenter #696, Washington Toxics Coalition)

Response: Ecology has prepared a generic integrated aquatic plant management plan for early infestations of Eurasian watermilfoil and made it available on our website.

13. This permit should include prescriptive evaluation and use of non-pesticide methods of vegetation control before pesticide application permits are granted. (Commenter #696, Washington Toxics Coalition)

Response: This request is outside the scope of this permit which covers the use of chemical control methods in lakes. Please see response to Comment #6.

14. Web posting of permit applications and treatments. Ecology should ensure that communities hear about pending permit applications by posting them on a central website, including information about public comment periods. Public announcements in newspapers are one

way to reach communities. However, as Ecology is already putting effort into putting more of the permit documents online, it would make sense to also add a section that lists public comment periods for coverage applications. (Commenter #696, Washington Toxics Coalition)

Response: Ecology is creating a web page that will be available through our Aquatic Pesticide Permits homepage that will list all pending applications available for public comment.

15. Ecology should also require reporting within 24 hours of treatment and post that information on the website. It is critical that communities have access to clear information about when applications have occurred. (Commenter #696, Washington Toxics Coalition)

Response: Requiring applicators to report treatment information to Ecology within 24 hours of treatment is difficult for applicators because they are often away from their offices for several days. The new permit will require that applicators report treatment information to Ecology each Friday during the treatment season. Ecology anticipates that this information will be available on the website by close of business each Monday. This information will also be available upon request.

16. Notification of neighbors. Ecology should require pesticide applicators to send notification of pesticide use plans to all neighbors near a water body, not just those directly along the shoreline. Individuals who live near lakes also deserve forewarning of pesticide applications. (Commenter #696, Washington Toxics Coalition)

Response: Section S6 of this general permit requires that people within one quarter mile of a treatment site along the shoreline and across the water be notified of a pending treatment no earlier than 21 days and no later 10 days prior to the treatment occurring. Lake residents and the public will know when the lake has been treated because signs are posted along the shoreline and at public accesses prior to the pesticide being applied to the water. Ecology believes additional requirements could be unduly burdensome.

17. The notification should include clear information about when the treatment will take place, with a specific date rather than a wide window of time. Posting of the site should remain in place for at least seven days or the length of water use restrictions, whichever is longer. (Commenter #696, Washington Toxics Coalition)

Response: Section S6 of this general permit requires that people within one quarter mile of a treatment site along the shoreline and across the water be notified of a pending treatment no earlier than 21 days and no later 10 days prior to the treatment occurring. It is not practical to require specific treatment dates because treatment is dependent on variables such as wind speed and weather conditions. However, lake residents and the public will know when the lake has been treated because signs are posted along the shoreline and at public accesses prior to the pesticide being applied to the water. Ecology believes that requiring all signs to remain in place until water use restrictions have

elapsed is sufficient (Section S6.D2).

18. We feel strongly that the Integrated Aquatic Vegetation Management Plan (IAVMP) process is essential for developing a plan that will be the most effective and least harmful. Another important element of this process is that it has required community involvement in decision-making for treatments. We urge Ecology to retain the IAVMP requirement, including the community involvement requirements. (Commenter #696, Washington Toxics Coalition)

Response: While plans are no longer required in the final permit, nothing precludes lake groups from developing these plans on their own. Ecology has a citizen's guide for developing plans available on its website or through its publications office. Ecology encourages lake groups to develop site-specific plans and under its Aquatic Weeds Grant Program, approved plans are required before projects are eligible for implementation funding.

19. In addition, the permit should include a requirement that applicants hold a public meeting during the public comment period to provide information about the vegetation being controlled, options that were evaluated, and to products that are being considered for use. Washington Toxics Coalition receives numerous phone calls from people who are cut out of local decisions on vegetation management and are looking for just such a forum to air concerns about planned treatments. (Commenter #696, Washington Toxics Coalition)

Response: WAC 173-226-150 states "any interested person may request a public hearing within thirty days of the last date of publication of the public notice required pursuant to WAC [173-226-130](#)(5).

(a) All requests for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing.

(b) The department shall only consider issues regarding the general permits applicability or nonapplicability to the discharger when considering the need to hold a public hearing.

(4) The department shall cause a record to be made of all hearings required pursuant to this section. The record may be stenographic, mechanical, or electronic."

Although a public hearing may be requested, Ecology is required to evaluate that request as it relates to the permit's applicability to a specific applicant's proposed activity.

20. We are extremely concerned with the language in this permit that Ecology will only consider comments as to whether the application meets the requirements of the permit. We do not believe that this limited consideration meets the requirements of the state rule. Furthermore, it is poor policy and disenfranchises interested persons, including neighbors that frequently use the affected waters. Interested persons are often better informed than the state agency and can provide critical input as to whether non-chemical treatment methods are feasible, as well as on what the potential effects of the application are. We request that you remove this

language and instead consider all comments as you make a determination. (Commenter #696, Washington Toxics Coalition)

Response: The only comments that Ecology is legally allowed to consider are those that relate to the applicants' ability to meet the required conditions of this permit. The public may comment on the specific project, by submitting comments on the SEPA checklist during the public comment period for that document (first 14 days of NOI public comment period). (WAC 173-226-150)

21. According to RCW 90.48.170, and as noted in the draft permit, an application for coverage must be made 60 days before the proposed discharge. The draft permit allows coverage, however, on the thirty-first day following submission of the Notice of Intent. This is in violation of the law. Moreover, should coverage be allowed on that date, it would occur before the completion of the thirty day comment period, which begins the date of the second publication in a newspaper. The permit must be revised to ensure that coverage does not begin before 60 days after the Notice of Intent is submitted or before the public comment period is closed and Ecology has considered comments. (Commenter #696, Washington Toxics Coalition)

Response: Ecology agrees with your comment and will revise the permit accordingly. Applicants will be required to apply for coverage under this permit at least 60 days prior to the application of pesticides to waters of the state.

22. This permit only requires monitoring for dissolved oxygen, and only in water bodies that are already listed as impaired due to low dissolved oxygen levels. Pesticides pose serious threats to human health and the environment. As each lake is unique, it is impossible to know how the ecosystem will react to a pesticide application or how the pesticide will act within that environment. Therefore, the permit should include monitoring for pesticide persistence and distribution, and impacts to all aquatic species. Monitoring should be required for each application. (Commenter #696, Washington Toxics Coalition)

Response: Aquatic herbicide monitoring has been conducted and will be continue to be conducted in Washington lakes under the Aquatic Weeds Program. Data are posted on Ecology's website.

23. Without adequate monitoring, how does the permit ensure that discharges don't cause or contribute to violations of water quality standards as required by state law? (Commenter #696, Washington Toxics Coalition)

Response: The application of pesticides to waters of the state is conducted under a short-term modification of the water quality standards. Therefore, regardless of monitoring, fluctuations in water quality outside of the standards are allowed for a short time under this permit. Ecology has conducted risk assessments on these pesticides allowed under this permit. Ecology is satisfied that when the permit conditions associated with the application of a pesticide, and the pesticide label requirements are followed, there will be

no long-term changes in water quality will occur as a result of the chemical treatments.

24. The workability of this permit and process will be directly impacted by the personnel at Ecology that process applications and oversee this process. In the past we have experienced significant problems getting permits because of decisions made by staff that have exhibited a bias against treatment. It should be pointed out that the recent EPA decisions and Ninth Circuit Court decisions specifically indicate that EPA registered aquatic herbicides and algaecides are not to be considered as pollutants when used according to their FIFRA labels. On that basis it remains questionable whether a waste discharge permit is required when we work in this state, the courts and EPA have explicitly stated that these products are not waste. We will endeavor to work under this permit and maintain a good working relationship with Ecology as we recognize that the State should have oversight of aquatic plant management operations. If we experience the types of problems we have in the past however, your agency has to consider the fact that we probably can proceed without this type of permit in many cases. We would hope that this does not become necessary. (Commenter #3, AquaTechnex)

Response: All coverages under this permit will be issued out of Water Quality Headquarters in Lacey. Ecology anticipates that using a centralized process will create consistency and aid in streamlining coverage issuance.

This permit is now being issued under joint state and federal authority. Although EPA has issued an interpretative statement about the need for NPDES permit for pesticide application to waters, they have not promulgated a rule. Nor has EPA endeavored to define “reside” or “unintended impacts” as described in the *Fairhurst v Hager* Ninth Circuit Court decision, which could eliminate the need for NPDES permits in some instances. Thus, Ecology believes that the *Talent Irrigation District Decision* has not been overturned by any other federal court decision and still stands.

Chapter 90.48 RCW states that the discharge of any material into water that alters the biological and chemical characteristics of a water body (even for a short period of time) is pollution and must be discharged only under a permit. Aquatic pesticides alter the biological and chemical characteristics of a water body and therefore their application to waters must be authorized under a permit.

25. State law requires your department to refrain from burdening noxious weed control efforts. It further requires that no state or local unit of government use any permitting authority, legal requirement or other legal mechanism to restrict the control of noxious aquatic weeds. There are a number of conditions in this draft that could violate these state laws depending on how they are applied by your department. I would request you keep this legal responsibility you have in mind. (Commenter #3, AquaTechnex)

Response: Many of the conditions in this permit are required by state law. It is Ecology’s opinion that these mandatory legal requirements are not a burden to noxious weed control efforts. A list of the mandatory portions of this permit can be found at this link: <http://www.ecy.wa.gov/pubs/wac173226.pdf>.

26. In general, I feel like there are some truly significant issues that the new permit tries to address, but that some of the suggested measures are poorly thought out and will likely have many unfortunate consequences, such as the 60-40 rule on a lot by lot basis. (Commenter #5, King County DNR, Lake Stewardship Program)

Response: Ecology agrees with the comment that the 60-40 rule on a lot by lot basis is unworkable and new language is proposed to address this in the final permit. See Condition S1.A in the final permit.

27. I think there will be many complaints and likely some long-term bitter feelings as well if Ecology practices strict enforcement of some of the provisions as written. The language is vague, perhaps intentionally so, but that will lead to a general perception of unfairness when and if enforcement is attempted. Several of the requirements are not explained or justified by scientific evidence or consensus, nor is there any rationale for how decisions were made if the science was contradictory. The Department needs to hold itself to the highest standards to set an example for other jurisdictions. (Commenter #5, King County DNR, Lake Stewardship Program)

Response: Ecology has clarified language and provided additional justification for different approaches in different sized lakes. For example, see Condition S1.A in the final permit.

28. Thanks for the templates at the end of the permit. (Commenter #5, King County DNR, Lake Stewardship Program)

Response: Comment noted.

29. I am very concerned that this draft permit does not protect the waters of our state from unnecessary and harmful uses of pesticides. Our lakes are home to endangered salmon, plants, and many other aquatic species that may be seriously affected by exposure to pesticides. (Protect Washington Lakes from Pesticides)

Response: Each herbicide and algicide approved for use under this permit has undergone rigorous review prior to being allowed for use in Washington State waters. All pesticides are reviewed for environmental and human health concerns by the Environmental Protection Agency (EPA) as required by federal law under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Each pesticide was then reviewed by the Washington State Department of Agriculture (WSDA), and approved for use in Washington State. Every pesticide allowed under this permit then underwent another rigorous review by Ecology. Risk assessments and environmental impact statements were prepared and are available upon request or can be reviewed on the internet at: http://www.ecy.wa.gov/programs/wq/pesticides/seis/risk_assess.html.

30. It is critical that Ecology has the ability to reject permit coverage to projects where non-chemical methods of vegetation control could be used. Ecology's job is to make sure our lakes are clean and that pesticides are used only as a last resort. (Protect Washington Lakes

from Pesticides)

Response: Please see response to Comment # 6.

31. Do not allow pesticide use for control of native vegetation, which is important habitat that should be protected. (Protect Washington Lakes from Pesticides)

Response: Please see response to Comment # 5.

32. Ensure that communities have proper notice before pesticide use, and that they are able to meaningfully participate in decision-making about proper treatment methods. (Protect Washington Lakes from Pesticides)

Response: The public process is built into every aspect of this permit. All comments submitted during the public comment period are responded to in writing and comment letters are posted on Ecology's website. Applicants are required to publish a public notice in a local newspaper twice prior to applying for coverage. This triggers a 30-day public comment period. During this time, the public also has the opportunity to comment on the State Environmental Policy Act project checklist submitted to Ecology as part of the application requirements. The public is also notified of an impending treatment if they are within a ¼ mile distance along the shoreline or across the water from a treatment area, and signs are posted throughout the treatment area, in public access areas, boat launches, along private property, etc. (Refer to Special Condition S6.B)

Proper treatment methods are established in the permit. The only treatment methods allowed for the control of aquatic plants and algae are those specifically outlined in this permit. The public's opportunity to comment on those treatment methods is during the formal public comment period that occurs prior to permit issuance.

33. Limit coverage for each applicant for one year. (Protect Washington Lakes from Pesticides)

Response: All Ecology statewide general permits and NPDES permits are issued for five years. State statute specifically states that permits issued for the control of aquatic noxious weeds are effective for five years (RCW 90.48.445). There would be an undue burden placed on noxious weed control efforts if there was a requirement to obtain coverage in each year, and repeat the application procedure (which includes extensive public notice requirements). State law does not allow Ecology to overburden the efforts to control noxious weeds (RCW 90.48.445).

34. Require coordinated planning and coverage for the large lake systems of Lake Washington, Lake Union, and Lake Sammamish so that the cumulative effects of herbicide use can be properly assessed. (Protect Washington Lakes from Pesticides)

Response: Each individual entity in those lake systems is able to obtain coverage under this general permit. While Ecology would like to develop a permit that is issued specifically for those large, multi-jurisdictional lake systems, Ecology would not be able

to prepare that permit prior to the 2006 treatment season.

35. We are relying on you to protect the health of our lakes and our communities. Please rewrite this permit to make sure that pesticides are only being used as a last resort and only for the control of noxious weeds. (Protect Washington Lakes from Pesticides)

Response: Ecology feels that when regulated under this permit, pesticide use for the control of aquatic plants does not cause long-term harm to the aquatic environment. Please also see response to Comments #5 and #6.

36. I survive on a small disability pension, and I need to be able to eat the fish that I catch in our Washington lakes and rivers without worrying about their bodies containing pesticides, no matter how small the amounts might be. (Commenter #87, Mary Ann Riley)

Response: Recent reports indicate that fish in some Washington lakes and rivers do contain chemicals. However, these chemicals are not the same pesticides that are permitted to be applied to state waters for the management of aquatic plants and algae.

37. Aquatic pesticides applied in accordance with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) are not “wastes.” This has clearly established by decisions of the United States Environmental Protection Agency and the U.S. Ninth Circuit Court of Appeals, as discussed in Ecology’s Economic Impact Analysis for this permit. Rather such pesticides, among the most-regulated substances on earth, are applied intentionally to deliver specific environmental benefits. Thus, requiring a “waste” permit may be inappropriate to regulate this activity. (Commenter #88, Washington State Noxious Weed Control Board, and Commenter #387, Lincoln County Noxious Weed Control Board)

Response: State law (Chapter 90.48 RCW) requires that the discharge of any material into water that alters the biological and chemical characteristics of a water body (even for a short period of time) is pollution and must be discharged only under a permit. The only permitting programs specifically spelled out in Ecology’s statutes at this time are NPDES and state waste discharge permit. This permit will be issued as an NPDES permit rather than a state waste discharge permit in order to comply with the standing decision of the U.S. Ninth Circuit Court of Appeals in the case of *Headwaters Inc. v. Talent Irrigation District*. See also response to Comment #24.

38. Does Ecology charge a fee for this permit? If so, how much will the fee be? Nobody with the State Weed Board, or anyone else we know of in the weed control field, has had the opportunity to provide input on any fees related to this permit. If there are to be fees, we urge you to open (or reopen) the entire fee structure to public comment. If Ecology proposes fees on any significance, please explain how the fee revenue will be spent. Will new staff positions be created and filled to process the proposed permit? If staff already on the state payroll will issue the proposed permits, we would expect fees to be nonexistent or insignificant. (Commenter #88, Washington State Noxious Weed Control Board, and #387, Lincoln County Noxious Weed Control Board)

Response: Ecology charges a fee for each coverage issued under this permit in accordance with Chapter 173-224 WAC. The fee is charged annually for the life of the permit unless the applicant terminates coverage. The fee for 2006 is \$343 and the fee will increase annually by the fiscal growth factor. The information on permit fees was not included in the permit issuance process because the rule establishing fees is a separate process. The fee rule is updated every two years and is being revised in 2006. Of the activities permitted by Ecology, the fee for aquatic pesticide use is the smallest.

39. We are hearing concerns from noxious weed control officials about the high costs of legal advertisements required under the proposed permit. (Commenter #88, Washington State Noxious Weed Control Board)

Response: Legal advertisements are required by Washington State Administrative Code Chapter 173-226-130 5(a). The public notice template provided in Appendix B of the permit meets the minimum requirements of this WAC. Publication is required twice, one week apart, when coverage is first applied for. Legal notices cover an activity for the duration of permit coverage (i.e., five years).

40. How wide of a geographic area could such a permit cover? If a county weed board was working with property owners to control a noxious weed in several locations, would each site need a permit, or could one permit cover the activities? (Commenter #88, Washington State Noxious Weed Control Board, and #387, Lincoln County Noxious Weed Control Board)

Response: Ecology is revising the permit language to allow government entities to obtain coverage for all activities under their jurisdiction under a single permit coverage.

41. It would be a mistake to include regulation of noxious weed control (which is required by law) with regulation of other aquatic plants and algae and nutrient inactivation (which are not required by law). In the current draft, there are no exceptions for rapid response to new noxious invaders or for enforcement actions under the noxious weed law. We strongly urge that noxious weed control, if it is to be subjected to this permitting, be handled in a separate permit. (Commenter #88, Washington State Noxious Weed Control Board, and Commenter #387, Lincoln County Noxious Weed Control Board)

Response: Although noxious weed control is regulated under state weed law, and the control of other aquatic plants and algae is not, Ecology is regulating the same activity - the chemical treatment of state waters for the management of aquatic plants or algae. In order to streamline the permitting process, the regulation of chemical applications to any in-lake aquatic plants or algae is included under one permit. Ecology acknowledges that noxious weeds are different than nuisance plants, but the activity of herbicide application is the same for both categories of plants. Therefore, one permit was written to cover both activities.

42. It seems that this new permit may require direct permitting, and related expenditures, from some entities and/or people who were previously covered under permit obtained and paid for by others. Yet we've seen no evidence of direct outreach by Ecology to identify such parties

and make them aware of the potential impact on their operations. We suggest an outreach program before the permit is adopted.

Response: Ecology's intention under this permit is to only regulate **in-lake** noxious weed activities previously covered under the Department of Agriculture's permit, and those activities related to nuisance plants, algae, and nutrient inactivation covered under Ecology's Nuisance Plant and Algae General Permit. Due to the confusion in the noxious weed community about which noxious weeds are being covered under which permit, Ecology is revising the permit to clarify which permit is the appropriate permit for coverage. There will continue to be outreach and public assistance associated with the issuance of this permit and its implementation.

43. We are hearing a lot of concern about the total costs of reporting, notification, and monitoring requirements. In "total costs" we include the expenditure of staff time by small entities like county weed boards, some of which are already stretched thin. Professionals in the noxious weed control field need to be consulted prior to adoption, to see if those requirements and costs will hamper noxious weed control activities. (Commenter #88, Washington State Noxious Weed Control Board)

Response: Comment noted.

44. Can treatments go forward during appeals? The answer must be "yes", or treatment windows, and possibly entire treatment seasons, may be lost. (Commenter #88, Washington State Noxious Weed Control Board, and Commenter #387, Lincoln County Noxious Weed Control Board)

Response: Treatments can go forward during appeals, so long as a stay or injunction is not granted by the Pollution Control Hearings Board.

45. Finally, what is the Department of Ecology doing to bring some regulatory consistency and predictability to the permit arena, when it claims a mandate to require permits for the application of aquatic herbicides? In just a few years, those who combat the devastating environmental impacts of aquatic noxious weeds have had to jump from obtaining Short Term Modification Permits to National Pollution Discharge Elimination System Permits. Between the time when those two permits were available, there was a short period when no effective permits were available. In the interim, noxious weed infestations that had been under effective management regimes received no treatment and made significant comebacks. Now, the Department of Ecology, without any requirements from the federal government, proposes a third new type of permit. If this proposed permit is implemented (hopefully after the above concerns and questions have been handled), is this permitting system likely to remain stable for some significant period of time? Stability is desirable. (Commenter #88, Washington State Noxious Weed Control Board)

Response: Ecology has little control over changes to laws at the federal level or over court decisions. It is our intent that this new permit will remain in effect for five years, unless influenced by changes in federal laws or court decisions. Ecology prefers to see

more stability in the permitting process as well.

46. If those responsible for controlling noxious weeds are not constantly adjusting to new permitting schemes, they'll have more time and more of their limited resources to spend on other aspects of their vital work. (Commenter #88, Washington State Noxious Weed Control Board)

Response: Please see response to Comment #45.

47. Fact: Within the past three years I lost three Bouviers to cancer. Why, when I've never lost a dog to anything but old age during the past thirty years? WE moved here five years ago and I allowed a pesticide company to spray for ants around the house perimeter every month. They reassured me my dogs could not be hurt by it. I 'know' they are reputable folks, responsible and would only use legal products. Two years after we had moved here and about a year after we began the regular pesticide poisoning around our home, my girl, Sonja was diagnosed with cancer. Next my Mr. Green got it, finally my little Annie. I've never used pesticide around my dogs and never on or around the property we had lived on during the previous ten years. I called the pesticide company and cancelled the monthly sprays and told them I suspected the pesticide. I don't blame them...they used legal products...but don't forget that at one time DDT was legal too. (Commenter #103, Sharon O'Hara)

Response: Aquatic pesticides go through a much more rigorous review than almost any category of pesticides approved by EPA. The herbicides and algacides allowed for use under this permit have also been extensively reviewed by both WSDA and Ecology prior to authorizing their use in Washington waters.

48. Our concern is, will the department have enough staff available to review the permit applications and turn them around in a timely manner so the activities covered under the general permit can be implemented during the work windows? (Commenter #161, Association of Independent Moorages)

Response: Ecology has streamlined the application procedures to minimize the resources needed to process applications. However, other factors can also slow approval of a completed application. The Notice of Intent (NOI) is required to be submitted at least 60 days in advance of the planned treatment, and in addition to the NOI, the applicant is also required to submit a SEPA checklist specifically related to the proposed project. Because these documents are available for public comment, Ecology must consider the comments (as required by law), requiring more time for review of the application. Ecology recommends that applications be submitted as far in advance of the planned treatment as possible, to ensure that timing for treatment can be met.

49. As a recreational boater and member of the United States Coast Guard Auxiliary, I have been transiting these waters to the Government Locks since 1946. The weed problem has evolved to the point where there is serious threat to the safety of vessels and swimmers. The weeds also clog fire fighting water pumps and drafting hydrants. I have recently experienced fouled underwater running gear and clogged engine water lines, from heavy concentrations of weeds

even in 20 feet of water. In one incident late last summer I had a near collision due to weeds around my props and shafts, resulting in failure to properly reverse. It is my understanding that the United States Department of Ecology has approved certain herbicides for effective weed control as safe. Inasmuch as these waters are legally part of the Navigable Waters of the United States, local government not only is precluded from policies that unreasonably restrict navigation in such waters, it has a responsibility to promote navigation rights. (Commenter #376, Robert Ovens)

Response: Ecology has been delegated NPDES authority under the federal Clean Water Act since 1973. The delegation requires Ecology to control waste discharges to waters of the United States within the state of Washington. Additionally, Chapter 90.48 RCW requires Ecology to control waste discharges to state waters.

50. Fees to implement management for State and County Listed noxious weeds have not existed for noxious weed control to carryout RCW 17.10. The fees would be a burden to the program and would be an additional issue for landowners to be compliant with State Noxious Weed Laws. (Commenter #377, Lewis County Noxious Weed Control Board)

Response: Local governments can continue to obtain coverage for most noxious weed projects under WSDA's permit. In-lake eradication or control projects for noxious weeds will require coverage under the new general permit. The permit fees and noticing requirements are the minimum requirements of WACs 173-220, 173-226, and 173-224.

51. The Weed Program would anticipate the need for multiple permit coverages to manage noxious weeds in various water bodies, watersheds, or along a course of a river. Excessive publication costs and management of multiple coverages would be a burden to the program. (Commenter #377, Lewis County Noxious Weed Control Board, and Commenter #387, Lincoln County Noxious Weed Control Board)

Response: Please see response to Comment #40.

52. Applying for coverage 60 days prior to planned activity: Upon discovery of a new weed infestation, the process and waiting period to effectively manage and/or eradicate a noxious weed is compromised by: the period of time required to prepare documents (NOI, SEPA); secure and post public notices; respond to WSDOE for any additional relevant information requested; and receive permit coverage to manage aquatic weeds. (Commenter #377, Lewis County Noxious Weed Control Board)

Response: Chapter 90.48 RCW stipulates a discharger apply for a permit at least 60 days prior to discharge. In order for an entity to obtain coverage to treat **in a lake**, the 60-day requirement must be met, a completed SEPA and NOI must be on file with Ecology, public notices must be sent out, and notices must be published in the newspaper.

53. The weed program would prefer to apply for coverage for a type of aquatic plants with one agency. As the permit now reads, the weed program would apply for coverage from WSDA and WSDOE for treatment of emergent noxious weeds and WSDOE for submersed weeds.

(Commenter #377, Lewis County Noxious Weed Control Board, and Commenter #387, Lincoln County Noxious Weed Control Board)

Response: The permit held by WSDA will continue to cover any emergent, submersed, floating, or floating-leaved noxious weeds found in wet areas **that are not in lakes**. For any submersed, floating, or floating-leaved plants being treated in lakes, coverage must be obtained under this new general permit through Ecology.

54. Barley straw permits: Ecology should encourage the use of biological processes and provide best management practices for their use to manage pests. Per the Fact Sheet...Chapter 90.48 RCW prohibits discharges of anything that could potentially alter the biological or chemical characteristics of a water body. (Commenter #377, Lewis County Noxious Weed Control Board, and Commenter #387, Lincoln County Noxious Weed Control Board)

Response: While barley straw is not considered a traditional pesticide, addition of biological agents to waters of the state can be considered “pollution” under Chapter 90.48 RCW and requires a permit. Thus, this permit establishes conditions under which barley straw may be applied to control algal growth.

55. Information is not clear on the special conditions for children’s summer camp. The fact sheet doesn’t give enough details about the situation. The example (“ability to apply herbicides to Elbow Lake”) and information doesn’t state that the application is taking place at the “camp”. My interpretation was that for any application in a water body where a camp may also be part of the lake, that a joint application is needed. If the camp was managing aquatic weeds wouldn’t they be involved in the process of securing an applicator and being a part of the permitting process, applying for coverage and requirements for posting? (Commenter #377, Lewis County Noxious Weed Control Board, and Commenter #387, Lincoln County Noxious Weed Control Board)

Response: Ecology intends for the camp to obtain joint permit coverage only if the water front in front of the camp was being treated. Accordingly, the camp owner is required to be a co-permittee. If the treatment is occurring in other areas around the lake, the camp would not be required to obtain joint coverage with the pesticide applicator.

56. Application limits to 40% littoral zone. This section needs critical review and alternatives considered. Practical field applications would be difficult to carry out under this recommendation and would put all applications at risk of being non-compliant. (Commenter #377, Lewis County Noxious Weed Control Board)

Response: Please see response to Comment #26 and revisions to permit conditions S1.

57. I am opposed to DOE’s pesticide permit process change that potentially increases the ease of pesticide application in our state waterways. I do not believe that enough is known about long term effects of our exposure to them or the byproducts of the combination of pesticides, herbicides, and other harmful contaminants. Personally I know many people here in Olympia with Multiple Myeloma and Parkinsons. New research now links exposure to pesticides and

herbicides as the cause of these destructive diseases. Shouldn't one balance the permit process on the side of health vs. business interests? (Commenter #386, Jana Wiley, R.N.)

Response: This permit allows the same herbicides and algaecides to be used that were authorized under the last permit(s), and requires annual reporting and stringent notification and posting. The aquatic pesticides allowed for use under this permit have undergone extensive review by the EPA, WSDA, and Ecology. WSDA and Ecology have only approved the aquatic pesticides believed to be least harmful to both human and environmental health when applied according to their pesticide label and our permit requirements. There are a number of aquatic pesticide active ingredients that are registered federally, but not allowed in lakes in Washington State due to our concerns. Ecology weighed the potential environmental and human health ramifications of using chemical control on aquatic plants and algae with those of business.

58. Particularly troublesome for me is the lack of public notice for those of us who live near waterways but not on them. Believe it or not, many people enjoy walking by water or spending time in or on it. I feel strongly that there needs to be heightened public awareness when one of these agents is being employed to “clean” up our waterways. We also should have the right to know so that we can publicly comment on proposed applications. (Commenter #386, Jana Wiley, R.N.)

Response: Please see responses to Comments #14 and #32.

59. I believe that the only way to improve the overall health of our planet is to be the most thoughtful balanced stewards we can be in our own locale. Allowing a fast track, streamlined approach to pesticide/herbicide applications without subsequent detailed monitoring is frightening. There is more to water quality than just dissolved oxygen levels. I would like to see more efforts at identifying complex chemical changes that could occur, especially in an urban watershed. (Commenter #386, Jana Wiley, R.N.)

Response: Please see responses to Comments #14 and #32.

60. Chapter 17.10 of the Revised Code of Washington and Chapter 16-750 of the Washington Administrative Code require property owners to control Class A and Class B-designate noxious weeds, including some aquatic noxious weeds. (Commenter #387, Lincoln County Noxious Weed Control Board)

Response: Comment noted.

61. Control of aquatic noxious weeds can be difficult and costly. Since state law mandates such weed control, every agency should ensure that its actions do not add to the difficulty and expense of complying with the law. We are concerned about several aspects of the proposed new permit. (Commenter #387, Lincoln County Noxious Weed Control Board)

Response: Ecology has streamlined the permit and associated processes within the bounds of statute and regulation.

62. Prior to the NPDES permit and the legislated 2,4-D treatment notification, we had to obtain a Short-Term Water Quality Modification Permit. I had to prepare a SEPA checklist only the first time I obtained the permit, even though I had to prepare a permit annually. I only had to have one permit to cover all projects in my county and it had no fee. What has changed to require a SEPA checklist for each application, multiple permits and the required fee? I would also like a cost-breakdown to see how it costs \$327 to administer each permit. If the idea is to recuperate the permit development costs, then why would the price not go down at some point in the future? (Commenter #466, Pend Oreille County Noxious Weed Control Board)

Response: A SEPA checklist for each project is required prior to receiving coverage under this general permit, and this checklist is applicable until the permit expires in 2011. Ecology is revising the permit to allow government entities to obtain a single coverage for all activities taking place under their jurisdiction. A fee is required for all coverage's issued under Ecology's general and individual permits. A stand-alone Short-Term Water Quality Modification is an administrative order and does not have a fee. Permit fees are authorized under Chapter 90.48 RCW. Fees for this permit are the lowest of all permit fees.

63. Under the signatory requirements, it states a ranking elected official needs to sign the application. Would the Weed Board Chair serve (appointed by the County Commissioners) or would it have to be signed by the county governing body? Would I be able to sign the reports, or would the Weed Board or Commissioners also need to sign these? (Commenter #466, Pend Oreille County Noxious Weed Control Board)

Response: The Weed Board coordinator or chair in your county should be an acceptable signatory on the application. The coordinator should also sign the annual reports.

64. I reread the activities excluded from coverage section and under number 1). It describes the man-made detention and retention ponds without an outlet, then says "ponds that will not discharge during or for two weeks after treatment." When I first read this, I thought it just meant ponds. It may be helpful to reiterate that you mean the same man-made ponds. (Commenter #466, Pend Oreille County Noxious Weed Control Board)

Response: Ecology agrees with the commenter and has made language changes to that effect. The second use of the word "pond" has been removed.

65. Federal Way currently manages aquatic weeds at two lakes within the city. Our program may expand in the future to include additional lakes. We believe that an economic hardship would be borne by the city based upon the annual permit fee of \$327.00 per lake. A more fair system should be set up that provides a permit fee cost reduction for management of additional lakes (more than one) within a jurisdiction on an annual basis. (Commenter #468, City of Federal Way Surface Water Quality Program)

Response: Please see response to Comment #40.

66. Please keep all herbicides out of any lake near Oroville, WA; and try to stop the killing of native fish for trout replacement! (Commenter #481, Gerry Milliken)

Response: If an applicant applies for permit coverage for a lake near Oroville and meets the requirements for coverage under this general permit, coverage would be granted, unless substantive comments are received to show that the treatment will cause previously unknown harm to the environment. The use of piscicides for fish rehabilitation projects is conducted by the Department of Fish and Wildlife under a separate permit. When that permit is rewritten by Ecology, we encourage you to submit your concerns about those activities.

67. We already have the EPA as a bought and paid mouthpiece for the huge chemical lobbies. Please, Department of Ecology really needs to protect our environment and the animals without voices, and our waters so that our children can swim in them! (Commenter #481, Gerry Milliken)

Response: Please see response to Comment #29.

68. I am concerned that this permit will give pesticide applicators free reign to apply pesticides in Washington lakes for five (5) years as it removes any process Ecology had to review the appropriateness of a pesticide application. (Commenter #578, Pat Sampson)

Response: Please see responses to Comments #23 and #33.

69. This new general permit removes an important provision from the previous permit which required that before their third year of pesticide use, applicators had to create a plan for vegetation management that reviewed non-chemical means of control. These plans, while not perfect, provided a point in the process where community input on options was sought and where Ecology could review alternatives to pesticides to be used. (Commenter #578, Pat Sampson)

Response: The community still has the ability to provide input to Ecology on the projects prior to approval. Please see also response to Comment #6.

70. The new draft general permit contains NO requirement for public input by means of a community meeting and NO development of an integrated plan. And to make matters worse, instead of granting specific terms requested by herbicide/pesticide applicators for only one year as is currently the case, the draft general permit allows the issuance of specific permits good for five years without review, community input, and with only minor monitoring. (Commenter #578, Pat Sampson)

Response: This permit provides the public has the right to comment during the 30-day public comment period at the time that a Notice of Intent is filed with Ecology, and that is also the start of a 14-day public comment period on the SEPA documentation submitted on the specific project. These public comment opportunities meet the requirements of

Chapter 173-226 WAC. See also response to Comment #33.

71. This new general permit requires monitoring only for Dissolved Oxygen and only in water bodies that are already listed as impaired due to low Dissolved Oxygen levels. Pesticides pose serious threats to human health and the environment. As each of the lakes (Washington, Sammamish, and Union/Portage Bay), it is impossible to know how the ecosystem will react to a pesticide persistence and distribution and impacts to all aquatic species. (Commenter #578, Pat Sampson)

Response: Please see response to Comment #29.

72. As a recreational boater, I have been transiting these waters to the Government Locks since 1952. The weed problem has evolved to the point where there is serious threat to the safety of vessels and swimmer. The weeds also clog fire fighting water pumps and drafting hydrants. I have recently experienced fouled underwater running gear and clogged engine water lines, form heavy concentrations of weeds even in 20 feet of water. It is my understanding that the United State Department of Ecology has approved certain herbicides for effective weed control as safe. Inasmuch as these waters are legally part of the Navigable Waters of the United States, local government not only is precluded from policies that unreasonably restrict navigation in such waters, it has a responsibility to promote navigation rights. (Commenter #633, Bob Trimble)

Response: Please see response to Comment #49.

73. In general, however, there is concern with the new fee structure, for which no information is provided in, or along with, this permit. Will each applicant be required to pay a permit fee to Ecology? Will each application site require a separate fee? If so, what will constitute an application site? If there are to be fees, DNR would like an opportunity to comment on the proposed structure. (Commenter #629, Washington State Department of Natural Resources, Aquatic Invasive Species Program)

Response: Permit fees are required for all general and individual permits issued by Ecology per Chapter 90.48 RCW and WAC 173-224. A fee will be charged annually for any permit coverage issued under this general permit. Government entities are able to obtain a single coverage for all activities within their jurisdiction. Commercial pesticide applicators must obtain an individual coverage for a lake. Information on permit fees is not included in the permit issuance process because the fee rules are a separate process open for comment and discussion every two years. The fee rule (Chapter 173-224) is currently being revised by Ecology, and will therefore be available for comment.

74. Prior to seeing the permit, it was my understanding from Department of Ecology staff that this permit was intended to cover nuisance and submerged noxious weeds in lakes. It seems as though some of that intent was carried through in the permit, where it reads like a lakes permit, though its stated intent is much broader than that. I ask that the purpose of the permit be clarified and that nothing be left open to interpretation. (Commenter #629, Washington

Response: Ecology agrees and the permit language will be clarified in the final permit.

75. An updated, streamlined permit process is a good idea. The document reflects a lot of work. However, the product's need must be documented as well as supportable by the "best available science." At the hearing in Centralia and personal reading of the document, it appears deficient in both aspects. (Commenter #634, Jerry Bennett)

Response: Please see responses to Comments #29 and #61.

76. A major policy change needs to have timely input from concerned stakeholders. The hearings like you are currently holding should be a second step. My perception is that the Department of Ecology is in a big hurry to arrive at a conclusion. A conclusion that has far reaching implications for property owners throughout the State of Washington. I believe that there is a need for DOE to have at least one or two more rounds of rewrites and hearings. If the hurry is not for funding requests from the legislature, what is the rush to change a long standing policy? (Commenter #634, Jerry Bennett)

Response: Ecology worked with an external advisory committee in developing the preliminary draft version of the permit. The group commented on the preliminary draft; and the permit was revised substantially prior to release as a draft.

Ecology also faces a time constraint. This new permit must be available in order for noxious weeds to be treated in lakes this treatment season (2006). Due to a settlement agreement between the Washington Toxics Coalition, People for Puget Sound, and WSDA, in-lake noxious weed control can no longer be permitted by the noxious weed general permit issued to WSDA. Because Ecology did not have a permitting mechanism in place for treatment of in-lake noxious weeds, Ecology must issue a permit prior to the 2006 treatment season.

77. One of the biggest problems is the 40% rule. The rule to a non-lake property owner or user may make sense. From a "common sense" practical point of view, the rule is arbitrary and capricious. No empirical evidence or data was presented during the workshop to justify the 40% value. Furthermore, application of a 40% rule to adjacent waterfront properties and whole-lake waters would become a nightmare. The implementation /enforcement of the rule would be impossible without hiring many officers to access personal property and surveyors to identify which portion of waterfront would be "locked up" for five years. The effect is that a property owner would have their property impaired for sale and may possibly need a permit from DOE to sell their land. (Commenter #634, Jerry Bennett)

Response: Please see response to Comment # 26.

78. Many terms in the policy need to be defined in context. The majority of people do not know the meanings of the terms and concepts. If you work with the ideas on a daily basis, you can understand the meanings. The way it reads now, attorneys will make a killing at taxpayer

expense. I believe that the intent may very well be to provide litigation points. (Commenter #634, Jerry Bennett)

Response: Ecology has streamlined the permit in its final version, within the bounds of legal constraints.

79. There appears to be no reason(s) for replacing and revoking the current permit processes that do not expire until June and July 2007. (Commenter #634, Jerry Bennett)

Response: See response to Comment #76.

80. My agency has grave concerns regarding this draft, as we do not believe it is consistent with either its associated draft fact sheet or with the consent decree filed in *Washington Toxics Coalition and People for Puget Sound vs. Loveland and Washington State Department of Agriculture*. (Commenter #666, Washington State Dept. of Agriculture, Plant Protection Division)

Response: Changes have been made to correct this situation in the final permit.

81. As written, we believe this draft permit would seriously inhibit WSDA's ability to carry out its legislatively mandated activities with regard to eradication/control of *Spartina* species, purple loosestrife and invasive knotweeds. It would also gravely interfere with the clearly stated public purpose (see chapters 17.10 and 17.24 RCW) of elimination of quarantine and noxious weeds. (Commenter #666, Washington State Dept. of Agriculture, Plant Protection Division)

Response: Ecology is clarifying the scope of activities covered under this new permit.

82. In all cases, the fact sheet should be made consistent with the permit. (Commenter #666, Washington State Dept. of Agriculture, Plant Protection Division)

Response: Discrepancies between the draft permit and the fact sheet will be corrected by an addendum to the fact sheet.

83. My comments address solely the elimination of noxious and quarantine weeds in aquatic environments. Please note the Washington State Department of Agriculture (WSDA) has substantial statutory authorities and responsibilities relevant to noxious and quarantine weeds, including specific programs for the eradication/control of *Spartina* species, purple loosestrife and invasive knotweed species. Also please note that the eradication/control of noxious weeds is required of all landowners under authority of RCW 17.10. We believe that state government has the responsibility to allow landowners to fulfill this duty in a timely, reasonable and cost-effective way. We have severe reservations about the scope of the draft permit, the delays inherent in the timelines specified, the cost of fees and excessive process requirements, and unresolved questions regarding applicant's responsibility for compliance with SEPA. (Commenter #666, Washington State Dept. of Agriculture, Plant Protection Division)

Division)

Response: Ecology agrees that certain types of noxious weed and quarantine weed control fall directly under the jurisdiction of the Washington State Department of Agriculture as detailed above. The areas of concern identified in the comment, such as the scope of the permit

84. The Aquatic Plant and Algae Management State Waste Discharge General Permit should be modified to create separate general permit requirements for Lakes Washington, Sammamish, the Ship Canal, Portage Bay, Lake Union and all tributaries flowing into these areas (WRIA 8). Alternatively, individual permits could be required for any applications proposing chemical treatment in the above mentioned areas (See S2.E.2 in the permit). (Commenter #667, Muckleshoot Indian Tribe, Fisheries Division)

Response: Ecology agrees with the suggestion to create separate treatment restrictions for control projects on the water bodies named above. Ecology has revised the permit to address these water bodies until a separate permit can be issued.

85. I am deeply concerned that Ecology continues to try and regulate the use of registered aquatic herbicides through the implementation of a new Waste Water Discharge Permit. Ecology embarked on this new permit under the direction that it was intended to be an updated version of the existing NPDES permits implemented back in 2002. However as the final draft was nearly ready for public comment Ecology changed the format from being NPDES based to a state wide Waste Water Discharge Permit. What new legal information was provided to Ecology during the eleventh hour of the development of this new permit that forced the change to a Waste Water Discharge Permit? (Commenter #668, Northwest Aquatic Eco-Systems)

Response: Please see response to Comment #1.

86. In view of the most recent EPA decision and rule making process undertaken by the EPA defining that the use of registered pesticides under FIFRA does not constitute the discharge of a pollutant or a waste product it appears that Ecology continues to try and regulate in areas that the agency may have no authority. (Commenter #668, Northwest Aquatic Eco-Systems)

Response: Ecology is required to comply with the 2001 Ninth Circuit Court of Appeals decision in the *Headwaters Inc. vs. Talent Irrigation District* case. Ecology does not believe that the *Fairhurst vs. Hagener* Ninth Circuit Court decision overturned the *Talent* decision for all situations.

Ecology also has authority under Chapter 90.48 RCW to regulate the discharge of any materials into waters of the state that have the potential to alter the biological, physical, or chemical characteristics of a water body. If NPDES permits were no longer required, any application of aquatic pesticides would still require a permit under state law.

87. The old NPDES system has worked adequately for the treatment of both nuisance and noxious weeds statewide providing protection from third party lawsuits (Washington Toxics Coalition). The need for a new Waste Water Discharge Permit is merely an opinion of your agency, one that will probably be challenged. (Commenter #668, Northwest Aquatic Eco-Systems)

Response: Please see response to Comment #1.

88. It would appear that this new Waste Water Discharge Permit effort was initiated because of the lack of a state permit to treat noxious weeds which was the result of a settlement agreement entered into between the Washington State Department of Agriculture and the Washington Toxics Coalition. There is no need to change the old NPDES permitting system for nuisance weeds. This new Waste Water Discharge permit should be directed at noxious weed control only. Some modifications to the current permit are in order and are acceptable under current legislation specifically directed at the NPDES format. This new Waste Water Discharge Permit may prove over the long haul to be a violation of the Clean Water Act and expose project sponsor to litigation under the Act. (Commenter #668, Northwest Aquatic Eco-Systems)

Response: Please see response to Comment #1.

89. There needs to be a transition from the old NPDES permitting program to the new proposed Waste Water Discharge permit. Many of the lakes currently covered under the nuisance weed NPDES permit already have coverage through 2007. The statement, "This permit revokes and replaces the Aquatic Nuisance Plant and Algae Control general permit" needs to reflect the ability for those lakes already covered under the current NPDES permit through 2007 to remain covered. They should then be required to obtain the new Waste Water Discharge permit upon expiration following the 2007 treatment season. (Commenter #668, Northwest Aquatic Eco-Systems)

Response: The Nuisance Weed and Algae NPDES permit will be revoked when this permit is issued. The new permit (Aquatic Plant and Algae Management General NPDES Permit) is designed to allow pesticide applications for control of noxious weeds in lakes in the 2006 season. To accomplish this a single permit will be issued requiring revocation of the existing Nuisance Weed and Algae NPDES permit. See also response to Comment #26.

90. The proposed restrictions associated with both weed and algae control activities appear to be in direct conflict with the very same laws and regulations that Ecology has mandated to protect the waters of Washington State. Ecology needs to produce data (good science) that supports the agencies actions and that such actions are reasonable.

Ecology needs to consider two Federal Cases Dolan & Nolan. Although these were land use cases the issues are similar because they are both based on science. Nolan finds that Government needs to demonstrate a bond or link between its mandated conditions in relation to a proposed activity. Dolan upholds this requirement and further adds that the condition

must be “roughly proportional” to the action that triggers the condition. It is the governments burden to demonstrate both the bond or link and the rough proportionality, since it the government that is imposing the condition. Ecology has failed in many aspects of this permit to establish this “bond or link” by providing little is any scientific data to substantiate why such permit requirements are justified. (Commenter #668, Northwest Aquatic Eco-Systems)

Response: Without more information on the cases named above, Ecology is unable to research them and provide an appropriate response to the comment.

91. The current draft permit calls for all water quality data obtained about a lake to be turned over to Ecology. This appears to be counterproductive and would discourage lake associations from being true stewards of our lakes by investigating potential pollution sources. Ecology needs to encourage these types of positive investigative actions. (Commenter #668, Northwest Aquatic Eco-Systems)

Response: Ecology will make changes in the final permit to address this issue.

92. The past system was plagued with administrative problems associated with permit reviewers imposing personal philosophies and opinions about herbicide use while disregarding common science and agency policy. This new system allows Ecology to build new bridges between your agency and lake groups and perhaps abide by the slogan on your business card “Working with you for a better Washington”. (Commenter #668, Northwest Aquatic Eco-Systems)

Response: Please see response to Comment #24.

93. The issue addressing arbitrary, erratic and discriminatory enforcement policies becomes ever so clear upon further review. All one needs to do is merely review some of the past actions by Ecology as to when the agency decided to take enforcement action and those situations when the agency decided “to look the other way.” (see the scanned letter from NW Aquatic Ecosystems to see examples of past actions)

Response: Comment noted.

94. I believe this new Waste Water Discharge Permit is a vast improvement over the old NPDES permitting system however positive changes noted should simply be converted over to the current NPDES program. Once current problems are addressed, hopefully the efforts will result in a workable solution for the treatment of non-native and noxious weeds for all residents of Washington State upon adoption. (Commenter #668, Northwest Aquatic Eco-Systems)

Response: Comment noted.

95. I understand that the purpose of this permit is to meet state law. But the intent of those laws is to protect beneficial uses to the maximum extent possible, (by dictating the manner in which certain activities may be performed within waters of the state), while simultaneously

protecting those waters from further harm or degradation during the performance of those activities. The permit should also serve to notify those members of the public who might legitimately be negatively impacted by weed control activities. (Commenter #671, Clallam County Noxious Weed Control Board)

Response: Please see response to Comments #14, 15, and 17.

96. I would like to commend Ecology for their work on such a necessary permit. It is evident that this permit is aimed at curbing problems that have occurred within lakes while balancing the legitimate need to control excessive vegetation growth in these same situations. Certainly those who have routine maintenance work to abate nuisance or even some noxious weeds within the water column, are anxious for this permit to proceed. However, the current draft of this permit seems to reach much farther than intended and creates considerable problems for those projects that tended to be marginally associated with weed abatement within lakes. This is especially true for emergent noxious weeds along shorelines or stream banks. (Commenter #671, Clallam County Noxious Weed Control Board)

Response: Comment noted. There has been confusion in the weed community about the applicability of this permit to noxious weed management. Ecology will clarify situations where the permit is required in the final permit.

97. Already noxious weed control is viewed as an unfunded mandate by the state. In the case of noxious weeds, Ecology is imposing a user-based fee system for a public benefit. Unlike with commercial applicators, who are engaged in making a profit and for whom permit fees are a part of doing business, weed boards and other public entities undertaking weed control are operating on fixed or shrinking budgets. Any money spent on permit fees or to implement the permit is not recovered as a cost of doing business in non-commercial situations. (Commenter #671, Clallam County Noxious Weed Control Board)

Response: Please see response to Comment #73.

98. Although it was certainly not the intent, reduced control of noxious weeds in any given season is a likely outcome if this permit is implemented as written. New fees, increased public notification requirements, and a longer permit processing period will likely scuttle many noxious weed control projects or even worse, greatly reduce voluntary landowner compliance with state noxious weed control laws. Under the requirements of this new permit, noxious weed control will become more expensive to implement, less responsive to new discoveries, and more focused on paperwork than on the ground results. This permit will certainly place additional burdens on already limited county budgets. For these reasons alone, it is apparent that noxious weeds and nuisance species, (or those that are governed by some state law), should not be grouped together within this permit. (Commenter #671, Clallam County Noxious Weed Control Board)

Response: Ecology does not have the resources to manage two separate permits for what is essentially the same activity-chemical control of plants in lakes. The additional

requirements identified in the comment above are required by state law.

99. Among the reasons for controlling noxious weeds is improving ecosystem functioning and preserving beneficial uses, in the long term. Noxious weed control can often directly improve water quality as well. However it is possible that short term diminishment of water quality may occur during the performance of necessary weed control activities. Nearly all government entities have acknowledged the detrimental impacts imposed by uncontrolled noxious weed infestations and have provided exemptions within their permitting structure that makes this work easier, not more difficult. **At the very least**, the permit should differentiate between herbicide control in lakes, in streams, or along stream banks as did the old NPDES permit. The distinctions are important as the first two are *intentional applications to water*, the last is *incidental overspray*. (Commenter #671, Clallam County Noxious Weed Control Board)

Response: Ecology agrees that the intent of this permit needs to be clarified. The intent of this permit is to cover primarily the application of aquatic pesticides to lakes, some peripheral applications to lake shorelines, and nuisance plant control in wet areas along roads and ditch banks (roadside maintenance).

100. It is unclear why Washington State continues to consider herbicides applied according to label as “waste discharges” that fall under the jurisdiction of Washington water pollution control laws (RCW 90.48). At the federal level, the Ninth Circuit Court of Appeals has recently determined otherwise, abolishing the need to apply for a National Pollution Discharge Elimination System permit for herbicide applications legally applied under FIFRA. It is understandable that Washington State reserves the right to impose stricter standards than the Environmental Protection Agency in regard to herbicide use. However, that kind of safeguard is already in place as each herbicide label must be reviewed by Ecology before it is labeled for use in our state. The Department of Ecology uses scientific data and toxicology information to establish safe, water quality standards at that time. Therefore this permit should merely be used to track where aquatic vegetation management is occurring and ensure that Permittees are applying in a manner consistent with the label. Minimal monitoring should be needed to verify that established safety standards are not exceeded or to detect problems that, for what ever reason, were not accounted for. Instead, this permit establishes onerous notification, reporting, and monitoring protocols that were previously tailored to the type of use, type of location, and type of herbicide in WAG-993000. (Commenter #671, Clallam County Noxious Weed Control Board)

Response: Ecology is required to permit the discharge of any materials to waters of the state that have the potential to alter the physical, biological, or chemical characteristics of a water body. Pesticides applied directly to water are “pollution” under state law, and have the potential to alter the characteristics of a water body. Ecology is required to comply with the Ninth Circuit Court of Appeals decision in the *Headwaters Inc. vs. Talent Irrigation District* case from 2001, in which the application of aquatic pesticides to water were determined to require an NPDES permit prior to application. Interpretative statements by EPA have not changed or overturned that 2001 decision, nor have other federal court decisions. The conditions of the permit mentioned above are required by

state law and Ecology has no authority to make changes to those permit conditions.

101. I strongly urge Ecology to initiate the process for any necessary legislative changes if the department does not currently have the latitude to provide exemptions. This should include exploring new opportunities to work directly through the Department of Agriculture which has oversight responsibility for the implementation of Noxious Weed Control Laws RCW 17.10 and WAC 16-750. At the very least, work to obtain any legislative changes necessary to allow the Department of Agriculture to continue getting coverage for emergent species which often bridge the gap between land and water and which may fall between the two agencies jurisdictions. (Commenter #671, Clallam County Noxious Weed Control Board)

Response: WSDA will provide permit coverage for all noxious and quarantine-list weeds, except for in-lake applications.

102. I see a problem with definitions in that plants seem to be categorized as either noxious weeds (as defined by law and including quarantined plants) or native plants. There are many species that fall through the cracks of being non-native but not on the noxious weed list. What if a person wants to mainly control *Vallisneria Americana* which is non-native, occasionally invasive, but not on the noxious weed list? If these plants are included in the native plant category that definition needs to be expanded. (Commenter #672, Department of Ecology, Environmental Assessment Program)

Response: Ecology agrees and has added some new language to the final permit. In Section S1.A.2.i., Ecology has added the term “*Non-native plants*,” which is defined in the permit as “*plants that are not native but not currently listed on the state’s noxious weed or quarantine lists.*”

103. The scope of this permit is far broader than was originally proposed. Noxious emergent weeds on shorelines are very different from submerged and floating nuisance noxious aquatic weeds. By definition this permit pulls in all shorelines that are shorelines that are waters of the state. This includes all lakes, rivers, and streams. (Commenter #673, Snohomish County Noxious Weed Control Board)

Response: Please see response to Comment #99.

104. Herbicides should not be considered a waste discharge. These products are registered by the EPA and approved by DOE for use in aquatic situations. (Commenter #673, Snohomish County Noxious Weed Control Board)

Response: Under state law (RCW 90.48), anything that is put into the water that alters the physical, biological, or chemical characteristics of a water body is “pollution”, and therefore requires a permit be obtained from Ecology prior to discharge. Washington State is required to issue NPDES permits, which regulate aquatic pesticides as pollutants, under the 2001 *Talent* decision.

105. Noxious weeds due to their program status and legal requirements should be under a separate permit if this permit system is used. A better solution is the development of a totally separate permit that covers pesticide applications. (Commenter #673, Snohomish County Noxious Weed Control Board)

Response: Please see response to Comment #98.

106. The idea of a permit for each water body or each private parcel is totally unworkable when you start dealing with noxious weeds on a landscape scale. Realizing that Spartina and knotweed are not covered by this permit, at least for now, gives rise to the questions of what happens when other noxious weeds reach the scale that these have. How will the DOE cover multiple water bodies in a region?

For example, the permit in place for knotweed control in Snohomish County covers all of WRIA 5 in which there are hundreds of water bodies. The reporting, notification, and fee requirements for this many water bodies is onerous. Currently we would need at least six permits for working in the main stems of the Stillaguamish River alone. In Spartina, unless Puget Sound is one water body, multiple permits would need to be issued. (Commenter #673, Snohomish County Noxious Weed Control Board)

Response: Please see response to Comment #40.

107. A very troublesome and very real aspect of the permit is that only loosestrife, knotweed, and Spartina are exempted. Again, we have no way of dealing with other widely distributed weeds. We are also left unable to treat other noxious weeds we come across while working under the existing permit (WAG993000). A real example is an area that we are working toward on the North Fork of the Stillaguamish River which has large gravel bar areas at the toe of a slide with knotweed, scotch broom, and butterfly bush. We have the permit to treat knotweed and any other listed noxious or quarantined weed. The new permit would stop us from treating the scotch broom and butterfly bush without a separate permit and totally different notification requirements for doing the same thing on the same section of river. This is very inefficient, redundant and just bad weed control. This brings another question to mind. This area is within the boundaries of mean high water making it waters of the state. Who pays the fee for this permit? I will venture a guess that it would legally be DNR paying for the permit and I don't see DNR paying for permits on all the aquatic weed sites they own. To carry this line of thought a bit further, with an MOU and working with the grant that the SCNWCB has in place the Board could pay for the permit. Another with all that goes into preparing it and another fee charged to a program that is already strapped with a small budget will result in less weed control. (Commenter #673, Snohomish County Noxious Weed Control Board)

Response: The applicator or government entity performing the application pays the permit fee. However, this permit is for **in-lake** noxious weed and nuisance weeds. For the situation described above, permit coverage would be obtained through WSDA for noxious emergent plants and quarantine-list weeds.

108. The system for identifying and managing the project around threatened and endangered plants may slow permitting and open an avenue for numerous appeals. Part of the problem comes from the secrecy surrounding the Natural Heritage Program in accurately identifying where these plants are. The secrecy is understandable, but will, no doubt become a problem after the permit is applied for. The potential delays in being notified and getting the required survey could delay work for an entire season. That delay in itself could put the same plants that are being protected in danger. (Commenter #673, Snohomish County Noxious Weed Control Board)

Response: Ecology understands that there are concerns with the amount of time associated with identifying threatened and endangered plants. However, it is extremely important that an accurate survey be completed on a lake prior to the application of a pesticide. Ecology will work diligently to streamline the internal process for notification of plants within a lake, and work with the permittee as much as possible to ensure that the planned treatment can occur as scheduled.

109. Permit WAG993000 covers “all noxious and quarantine-list weed control activities that discharge herbicides directly into the surface waters of the state of Washington” (Page 7). This new permit does not include Spartina, knotweed, or purple loosestrife, although this is never stated in the permit. The statement was made that if there is an existing program (knotweed, loosestrife, Spartina) that the old permit will stay in place. The new permit covers “some emergent noxious aquatic plants throughout the state of Washington” (Page 10 Geographic Area Covered). All “shoreline emergent vegetation where chemicals may enter the water” are covered on Page 7. There is no distinction made for noxious weeds on the shoreline and there is nothing that sets the three above mentioned species aside. (Commenter #673, Snohomish County Noxious Weed Control Board)

Response: Ecology agrees with the comment and will clarify what will be covered in this permit. Ecology does not intend to cover noxious weed control in areas that are not **lakes**.

110. The lack of mention in the new permit of the exemption of these current programs brings up several issues. Have I missed the part where these programs are exempted in the new permit? If I’ve missed it great. If not, the exemptions for current programs need to be stated in the new permit. (Commenter #673, Snohomish County Noxious Weed Control Board)

Response: Ecology agrees and has added language clarifying the types of projects covered by this permit.

111. Once the old permit expires (next year), will the new permit essentially replace it and make these species as hard to control as the rest of the listed and quarantine weeds that are covered? The reassurances that DOE will work with WSDA to develop a new permit are not very comforting since once our existing permits expire, unless laws are changed, this will be the permit that is available. There does not appear to be another option if we can’t use the NPDES permit and there is no actual aquatic pesticide permit. (Commenter #673, Snohomish County Noxious Weed Control Board)

Response: Ecology will begin rewriting the WSDA permit for emergent noxious and quarantine-list weeds after this permit is issued. The Aquatic Plant and Algae Management permit (the permit under consideration) is intended to cover only **in-lake** noxious weed management.

112. Finally, and most important, what defines an existing program? From what I have seen the only thing that sets these programs off from the other weeds is WSDA having funding for control and taking on the permit. The Noxious Weed Control Board appears to be a WSDA program if you look at WAC 16-750. WSDA provides funding for the Board which seems to make it a WSDA program if the criteria is funding. (Commenter #673, Snohomish County Noxious Weed Control Board)

Response: WSDA defines an existing program under their permit.

113. Using the existing program criteria and the wording present in WAG993000, all noxious and quarantine weeds would be exempt from this permit. Going even farther, the quarantine list is directly a WSDA program and WAG993000 covers quarantined plants. Using this rationale, there need to be no change to shoreline emergent noxious weed permitting since they are covered under an existing WSDA program. (Commenter #673, Snohomish County Noxious Weed Control Board)

Response: You are correct that there is no change to the permitting program for emergent noxious and quarantine list weeds. People wishing to control those types of plants should continue to obtain coverage under WSDA's permit.

114. I appreciate the amount of work that has gone into writing this new permit, but the permit falls far short of what is needed to control noxious weeds on the landscape size scale the SCNWCB is working. The result of this permit will be more confusion, less noxious weed control, more infestations, and most likely property owners doing their own control because the system is so cumbersome. This is a one size fits all permit written for lakes which does not work noxious weed control. Please develop a separate permit for aquatic pesticide applications which deals with landscape size areas, not each water body, and that takes into account different characteristics of different types of water bodies. (Commenter #673, Snohomish County Noxious Weed Control Board)

Response: Ecology will begin re-issuance of the noxious weed permit issued to WSDA following completion of all phases of this permit issuance.

115. I realize that DOE is responding to the interpretation of the recent court rulings and to what is in state statute. If statutes need to be changed to allow an aquatic pesticide permit that works, that is the direction in which we need to head. If a workable permit can come out of the existing process than it needs to be written. Writing an unworkable permit for controlling shoreline noxious weeds because it seems to be the only option is bad governmental policy and will result in bad noxious weed control. (Commenter #673, Snohomish County Noxious Weed Control Board)

Response: The permit has been clarified to deal with in-lake noxious species only. Other noxious species will continue to be controlled under the general permit issued to WSDA.

116. I used to work for Ecology and, as part of my duties, had to issue Water Quality Modifications for the use of herbicides and zoocides (rotenone) in lakes in Central Washington. I was very reluctant to issue these permits after learning several things about the subject: There are many viable alternatives for keeping non-native plants out of lakes, among which is to never put them there in the first place. These methods, mostly mechanical, did not need to be used any more often than chemicals. (Commenter #675, Janet Strong)

Response: Many noxious weeds are introduced into lakes inadvertently through boating activities. Once introduced, it is very difficult to remove noxious weeds. Many methods, including non-chemical techniques, are being used throughout Washington to manage these weeds.

117. Pesticide spraying often killed native plants as well as non-natives, thus removing wildlife habitat and erosion control services performed by native plants. (Commenter #675, Janet Strong)

Response: There are two selective herbicides available under the final permit that can specifically target the state-listed weed Eurasian watermilfoil leaving native species unharmed. Other herbicides can sometimes be used at low concentrations to try and selectively remove the noxious species.

118. Enforcement was scant, depending mostly on the honor system and the word of the operator. Companies, one in particular, who did not abide by the regulations was stopped only after several egregious offenses on both sides of the Cascades. Much environmental damage was the result. (Commenter #675, Janet Strong)

Response: Comment noted.

119. Herbicides applied to lakes and irrigation ditches often end up in fish-bearing streams either through subsequent flooding or through underground seepage of water through soils. Damage to fish resources can result. (Commenter #675, Janet Strong)

Response: Most herbicides in fish-bearing streams come from application of terrestrial herbicides.

120. We don't know enough about the long-term harmful effects of these toxins to humans swimming or boating or drinking in lake water, to fish and other aquatic organisms or to changes in the aquatic ecosystem caused by these applications. Copper sulfate, poisonous to fish and plants, stays in the bottom sediments indefinitely. (Commenter #675, Janet Strong)

Response: Copper sulfate is no longer allowed for use in Washington lakes. Ecology has conducted extensive risk assessments of each herbicide allowed for use under this permit.

121. My recommendation for Ecology is to tighten up the regulations for pesticide application, eventually eliminating all applications of toxins to lakes, wetlands and irrigation ditches. Our future should become less toxic, not more so. There are other, safer choices. (Commenter #675, Janet Strong)

Response: Comment noted.

122. The City of Maple Valley has three lakes within its corporate limits; Lake Wilderness, Lake Lucerne and 54% of Pipe Lake. Forty-six percent of Pipe Lake is within the corporate limit of the City of Covington. Lakes Pipe and Lucerne have infestations of Hydrilla and Lake Wilderness has infestations Eurasian Milfoil. All three lakes have Integrated Aquatic Vegetation Management Plans that were approved by the Department of Ecology. These plans, developed by a public process, have carefully considered management options and established best management practices for aquatic plant management from a holistic viewpoint. We are confident this methodology is superior to the lot by lot approach taken under the new permit. (Commenter #684, City of Maple Valley)

Response: The final permit has been revised to allow treatment depending on lake size. See permit Condition S1.

123. Additionally, it is important to us that the permit be issued by Ecology headquarters to avoid the discontinuity we experienced in the past when regional offices made autonomous decisions and interpretations that differed from headquarters. We hope to avoid this in the future. Who will the permit administrator be? (Commenter #684, City of Maple Valley)

Response: Ecology intends to have a centralized permit administrator based out of Ecology headquarters in Lacey.

124. The Northwest Marine Trade Association is comprised of over 800 member companies in marine related fields located around the Northwest and U.S. The NMTA membership represents locally over 50 marinas on Lake Washington, Lake Union, and the Lake Washington Ship Canal. Comprising over 5,300 moorage slips. This total does not include area yacht clubs, community docks, or homeowner maintained piers and floats. The NMTA has worked closely with the regional yacht clubs to address the restricted access and financial problems created by noxious aquatic plants invading area marinas and waterfront properties.

At the core, marinas are a service industry offering safe, clean, and convenient facilities for boat owners to store their vessels in area waters. Uniformly, those marinas located in bays or along waterways with depths less than 20 feet in Lake Washington, Lake Union, and the Lake Washington Ship Canal are impacted by invasive aquatic plant species including Eurasian Milfoil and Brazilian Elodea to name a few. Various means of mechanical and manual harvesting have been employed by all facilities to maintain customer access to marina slips in the event herbicide treatment was not available due to the permitting process or necessary harvesting during which fish migration windows. The results of harvesting include significant expense when manual methods of harvesting (divers) are employed, limited success with the mechanical harvesters due to the shallow waters and

pilings/structures and in general the plants return in higher density due to fragmentation by either method employed.

The economic impacts associated with the noxious aquatic plants, the resulting control methods, or a lack of available means to control the invasive plants include:

1. Convenience and safety are significant criteria evaluated by boaters when choosing a marina. Dense growth of noxious aquatic plants in the slips and channels of the marina will restrict boaters access to the slips, present potential damage to the vessels due to limited control, and possible engine damage due to restricted cooling inlets. On average, 30% to 50% (100% for marinas located in shallow bays) of the marina slips in the area are impacted by noxious weeds. This is a significant financial challenge to local marinas to maintain access and a safe operating environment to the boating public.
2. Over 1,000 family wage jobs are dependent on the continued moorage of vessels in Lake Washington, Lake Union, and the Lake Washington Ship Canal. These jobs are represented by hundreds of area vendors and staff servicing the engines and systems on local boats, over 20 area boat repair yards and staff, and area yacht brokerages.
3. As indicated above, there is a significant financial burden on area marinas and property owners to rely solely on harvesting methods which have limited impact on the growth of noxious aquatic plants. Manual methods (divers) and the mechanical harvesters have limited success in clearing the plants from the navigable channels and moorage slips of the marinas at significant expense. When an entire bay is impacted, manual methods are impractical on many levels.
4. If no efforts are undertaken to control the noxious aquatic plants or if the financial burden prevents ongoing harvesting of the plants, there is a significant loss of economic value to the property and business owner. (Commenter #685, Northwest Marine Trade Association)

Response: The permit provides for treatment of in-lake noxious weeds to ensure the beneficial uses of a water body are preserved.

125. Noxious aquatic plant species impact the issue of safety on many levels. The safety of local boaters and swimmers is at risk due to the dense growth of the invasive plants. The same plants indirectly impact the ability of our first responders to protect life and property along our shorelines.

1. There are several documented cases of swimmers becoming entangled in milfoil and elodea with tragic results.
2. Boats cannot safely transit or maneuver in waterways with dense growth of noxious aquatic weeds.
3. The City of Seattle has enacted a new fire code enabling the use of drafting hydrants to supplement the necessary flow of water to fight vessel and waterfront property fires. Dense growth of noxious aquatic plants will foul and restrict the ability of the fire trucks to pump water when it is most needed. Fireboats required to battle fires in the same situation have to waste critical time clearing the plants which fouled pump intakes.
4. Harbor Patrol vessels are restricted from the same waterways due to dense growth of

noxious weeds inhibiting their ability to conduct search and rescue activities when necessary. (Commenter #685, Northwest Marine Trade Association)

Response: Please see response to Comment #124.

126. There are significant economic impacts to local marine businesses and property owners regardless of the method employed to control the growth and density of invasive noxious aquatic plants. The ability to treat and control the growth of the plants with herbicides is a necessary option which provides longer term results and significantly reduces the density of the plants on the treated property. It may be possible after several successful treatments of herbicide to control the density of the noxious plants with harvesting methods but this is not feasible in all cases due to the depth or size of the impacted property. (Commenter #685, Northwest Marine Trade Association)

Response: Please see response to Comment #124.

127. Private application of aquatic pesticides in lakes must be carefully regulated. Alternatives exist for many specific conditions. When non-chemical methods are available and effective, Ecology should not approve the use of pesticides in our lakes. A section must be added to this permit that requires anyone who wants to make an application of pesticides to a lake to determine non-chemical methods and review these options with Ecology. This process should be conducted not just by the pesticide applicator but also with the sponsoring lake group. (Commenter #693, People for Puget Sound)

Response: Please see responses to Comments #5, 6, 7, 8, 9, 11, 13, and 14.

128. The permit should be written so that lakes with multiple jurisdictions are coordinated. This will better protect our environment and will likely save money for the jurisdictions. (Commenter #693, People for Puget Sound)

Response: Ecology agrees that there is a lack of coordination on large, multijurisdictional lakes. A separate permit would need to be developed to require coordination between different jurisdictions.

129. Public participation and review of NPDES permits and activities which impact the environment and potentially human health, is critical. Web posting of permit applications and treatments, notification of all nearby neighbors, and community involvement in the Integrated Aquatic Vegetation Management Plan (IAVMP) process including public meetings during the public comment should all be included in the permit. The decision to use pesticides and method of pesticide applications should be open to public participation by all parties in the vicinity of the proposed activities. Further, non-chemical alternatives information should be fully provided to the public as part of the decision-making process. (Commenter #693, People for Puget Sound)

Response: Please see responses to Comments #5, 6, 7, 8, 9, 11, 13, 14, and 70.

130. Monitoring for aquatic pesticides should include monitoring for the toxic chemicals that are being applied to the water body. This requirement would ensure compliance with water quality standards. We require self monitoring by other types of dischargers and should similarly have this requirement in the permit. Limited dissolved oxygen monitoring is not adequate protection. (Commenter #693, People for Puget Sound)

Response: Ecology obtains information on the distribution and persistence of the aquatic herbicides through our Noxious Weed Grant Program. We have also funded monitoring projects and conducted in-depth risk analyses and environmental impact statements on each product prior to allowing its use.

131. Given the huge amount of money the federal, tribal, state, local and regional agencies, as well as numerous non-profit groups, such as People for Puget Sound spend to plant and re-introduce native plants, we strongly oppose allowing aquatic pesticide use to remove native plants unless there are specific conditions that warrant such a use. Therefore, native plants should be excluded from this permit. (Commenter #693, People for Puget Sound)

Response: Please see responses to Comments #5, 6, 7, 8, 9, 11, 13, and 14.

132. Hopefully an aquatic pesticide application permit will not be necessary in the future, as good alternatives will become the preferred method for noxious weed and invasive plant control. In the meantime, however, this permit should seek to minimize adverse impacts on our vital aquatic species as well as human health.

Black Hills Audubon Society (BHAS) is very concerned with this Aquatic Pesticide Permit 1.06 which will basically give pesticide applicators free reign to apply pesticides in Washington lakes for the next five years. Our organization is committed to securing healthy ecosystems for man and wildlife alike. Aspects of this permit weaken our ability to do so.

This new permit never requires applicants to use or even evaluate non-chemical methods of vegetation control. When non-chemical methods are available and effective, Ecology should not be approving the use of pesticides in our lakes. Ecology needs to add a section to this permit that requires anyone wanting to make an application of pesticides to a lake to review non-chemical methods and review these options with Ecology. This process should be conducted not by the pesticide applicator but by the sponsoring lake group. Ecology should not cede its ability to reject applications that are unnecessary; its job is to protect our lakes and it should be able to deny permit coverage for lakes where non-chemical methods are possible. We are very concerned that this permit takes away BHAS's and its members' ability to suggest or for review of less harmful alternatives to pesticides. (Commenter #694, Black Hills Audubon Society)

Response: Please see responses to Comments #6, 7, 8, and 9.

133. This permit would allow each lake five full years of coverage, meaning five years of pesticide applications without any public comment period or review by Ecology (except in miniscule annual reports that basically only note monitoring results). The previous permit

gave only one year of coverage, so Ecology could review changing situations in lakes on a year-to-year basis. The previous nuisance (native) permit included public comment periods for each year, so the community had an opportunity to voice their concerns about any pending application. The new permit should not give coverage to any individual lake for longer than one year at a time. **Loss of the ability to comment at a reasonable interval could be considered a class violation of due process.** (Commenter #694, Black Hills Audubon Society)

Response: Please see responses to Comments #33 and 70.

134. Ecology should not allow native plants to be killed under this permit. Native plants provide important habitat and are necessary for our lake ecosystems. Noxious weeds may pose a threat to our lakes, and native plants are vital to fighting off noxious weed invasions. Native plants should not be included in this permit. (Commenter #694, Black Hills Audubon Society)

Response: Please see response to Comment #5.

135. Ecology should ensure that communities hear about pending permit applications by posting them on a central website, including all information about public comment periods. In addition, Ecology should require pesticide applicators to send notification of pesticide use plans to neighbors near a water body, not just those directly along the shoreline. As noted above, the participation opportunities in the draft permit are minimal and need to be strengthened. Communities should have the opportunity to meaningfully participate in the decision-making process about whether a pesticide or less-toxic alternative should be used in a lake. Ecology should amend the permit to allow for public comment and appeal on all aspects of an application for coverage under the permit. (Commenter #694, Black Hills Audubon Society)

Response: Please see response to Comment #14.

136. This permit only requires monitoring for Dissolved Oxygen, and only in water bodies that are already listed as impaired due to low Dissolved Oxygen levels. Pesticide pose serious threats to human health and the environment. As each lake is unique, **DOE should not only rely on a general programmatic review but also on site specific reviews** since it is impossible to know how the ecosystem will react to a pesticide application or how the pesticide will act within that environment. Therefore, the permit should include monitoring for pesticide persistence and distribution, and impacts to all aquatic species. (Commenter #694, Black Hills Audubon Society)

Response: Please see response to Comment #22.

137. A review of the draft Waste Discharge General Permit for Aquatic Plant and Algae Management reveals two issues that may result in less effective monitoring of pesticide applicators under the new permit system. (Commenter #695, GreenLaw Advocacy)

Committee)

Response: Comment noted.

138. There are unsettling timeline inconsistencies that may open the process to abuse. It is possible that these inconsistencies may result in effectively reducing or limiting the public's opportunity to review and comment on permit applications, and may result in actual applications of pesticides before the public comment period is complete. (Commenter #695, GreenLaw Advocacy Committee)

Response: Ecology agrees that there is some inconsistency in the timeline outlined for issuance of coverage in Section S2 of the permit. This has been corrected.

139. Removing the permitting process from the umbrella of authority of the Clean Water Act will likely preclude citizens from utilizing the legal system to compel enforcement of water quality regulations. (Commenter #695, GreenLaw Advocacy Committee)

Response: Please see response to Comment #1.

140. The vigilance of a concerned public has been an important factor in limiting the use of dangerous pesticides in Washington's lakes. As advocates for a healthy environment, we fear that these changes in the permitting system will reduce the public's ability to be involved in decisions that affect this important resource. (Commenter #695, GreenLaw Advocacy Committee)

Response: Please see responses to Comments #14, 15, and 17.

141. Over the past ten years I have watched Ecology write these types of permits for aquatic weed control (Water Quality Permit, NPDES and now State Waste Discharge Permit), having even participated in the development of the NPDES. Unfortunately, the quality of this draft permit is poor. It's long, confusing, ambiguous, inflexible, and unwieldy. How many licensed applicators from state agencies and the private sector sat on the committee that drafted this permit? I'm guessing none. (Commenter #698, Washington Department of Fish and Wildlife)

Response: A number of representatives on the External Advisory Committee aided in the drafting of this permit. This group included private commercial applicators, government representatives, tribal representation, county weed board members, members of the academic and consulting community, environmental groups, and lake homeowners.

142. I would be in favor of more stringent permit restrictions if there were a pattern over the last ten years that a product or a method resulted in off-target, or adverse effects. I don't believe that has occurred, so environmental and public safety cannot be used as the reason for the obtuseness of this current draft permit. By making your permit confusing and difficult to comply with you will alienate applicators and citizens from seeking coverage, create needless litigation, but not stop unauthorized applications. Maybe that's your goal. (Commenter #698,

Response: Ecology has provided clarification in the final permit. However, permits, by their nature are legal documents and as a result can be complex.

143. Since 1996, I have seen aquatic weed control techniques improve and new, safer products be applied at lower rates that result in higher efficacy. Coincidentally, during the same time period I have watched the permitting requirements become more stringent. I would put forward that the number and acreage of water bodies affected by listed, noxious weeds has increased substantially, based on intrinsic growth rates, propagule spread, and the sheer number of water bodies that have never been, or ever will be treated. From my perspective the threat is from the real, unmitigated spread of noxious weeds, not the legal and judicious use of labeled herbicides. I urge you to consider my comment and make the permit clearer and easier to use. (Commenter #698, Washington Department of Fish and Wildlife)

Response: Please see response to Comment #142.

144. How much is this going to cost and how much paper work will this require for a land management agency like WDFW? Currently, the agency is covered under a single blanket permit for noxious weeds where we provide the applicator names and the locations we propose to treat and there is no cost to the agency. It is unclear whether I will be able to get this blanket coverage, or whether each applicator for WDFW will have to apply for each water body they treat, individually. I certainly hope that is no Ecology's intent is, because it would create an unnecessary bureaucratic morass, increase costs, and impede the legal requirement to control noxious weeds on our lands. The permit does not make any of this clear. (Commenter #698, Washington Department of Fish and Wildlife)

Response: Ecology is changing the permit to allow government entities to obtain coverage for their entire jurisdiction under a single coverage. The control of emergent noxious weeds as well as submersed noxious weeds in marine areas, rivers, streams, wetlands, etc., will continue to fall under WSDA's permit for aquatic noxious weed control. WDFW will only need to obtain coverage under this permit for **in-lake** treatment.

145. Does this permit have to fall under the Washington Water Pollution Control law, or is that a decision Ecology made independently? I thought the current interpretation of the law and position by EPA was that pesticides legally applied to water according to their label are not defined as pollution. Is there an alternate permit/statute that could be used? (Commenter #698, Washington Department of Fish and Wildlife)

Response: Any substance added to the water that has the potential to alter the physical, biological, or chemical characteristics of a water body is **pollution**, and therefore requires a permit. Application of pesticides to water bodies is regulated under RCW 90.48, the Washington Water Pollution Control Law.

146. I am writing you to comment on the draft revision of the aquatic plant and algae discharge permit. I speak for myself as an aquatic applicator, and my clients, whom are mostly agricultural producers and property owners associated with county drainage districts. I estimate these to number upwards of 500 individuals. We have struggled to obtain permits in the past to control noxious plants in an efficient and timely manner. Some years we couldn't get permits and our programs to control vegetation were set back costing the producers extra money and lost opportunity to maintain the drainage systems. (Commenter #701, Walden Haines)

Response: The final permit will be available for in-lake treatment of noxious weeds for the 2006 season.

147. For the previous couple of years the permit system has been workable and we were able to make some progress in our efforts to manage our vegetation problems. (Commenter #701, Walden Haines)

Response: Comment noted.

148. This year, thanks to notification by our local noxious weed people, I have become aware of some major revisions in the draft permit. I am extremely concerned inasmuch as I was not notified, nor were the property owners/producers/drainage districts notified of these costly and complicated and time consuming revisions. There are many unanswered questions that come up – cost of permit – various sites in a drainage district – many property owners along a drainage ditch requiring notification when they have requested vegetation management in the first place. I was chagrined, to say the least, that I had to find out about these changes from a third party and have not been able to pass the information down to the people most affected – the citizens/growers in the ag community. (Commenter #701, Walden Haines)

Response: None of the activities you have mentioned will be covered under this permit unless they involve the removal of native plant species, or non-native emergent plants that are not on the noxious or quarantine weed lists. The control of emergent noxious weeds will continue to be permitted through WSDA. Ecology apologizes for any confusion in what the purpose of this draft permit is – it primarily addresses the control of aquatic plants in **lakes**.

149. I am very concerned that we will once again be facing rules and regulations that will preclude us from getting our spring weed control done due to lumping the agricultural community in with the general public i.e. boating, swimming, and fishing activities. Please give us a reasonable opportunity to do our job and provide us with an ag exemption where it is applicable. At the least we shouldn't have to be so severely restricted when no known environmental harm has ever been shown to exist in controlling noxious vegetation in agricultural drainage ditches in Western Washington. (Commenter #701, Walden Haines)

Response: Please see response to Comment #148.

150. I understand that the state is limited by federal guidelines. Nevertheless, in my mind, the state has the right and a solemn obligation to protect and safeguard the integrity of our lakes. I am concerned that by issuing rigid, prescriptive permits we lose all power to treat individual lakes as they deserve to be treated: as unique water systems with site specific problems and site specific solutions. There is nothing in the permitting process to ensure that permits aren't issued inappropriately. The lakes have no protection, no voice. I regret that I only have one creative solution to offer. I believe the DOE needs to have staff in a regulating position to go out and inspect lakes, address what is in the best interest of that particular lake and issue a detailed permit outlining the appropriate plan of action. Dr. Lake comes, diagnoses, writes the prescription. He/she would operate under general, well-understood guidelines (milfoil gets eradicated, conservancy areas are set aside, wetlands are noted and protected, taking no action becomes a real possibility as well as fast, immediate action, etc.)

I would like to see the applicators in the position of just that – applicators. Remove them as diagnosticians with a conflict of interest.

I do not believe this is an “impossibly foolish” idea. A limnologist told me he could spend a day at our lake with the data we have collected and give us a detailed plan of where to treat, where to preserve and steps to take in order to manage the nutrients and aquatic plants; a plan to work with the system, reaching an ecologically balanced state. Isn't this the kind of creative medicine we want for all our lakes. By not using our ecology staff to review permits but rather to review lakes and write straight forward permits, we could really bring forward appropriate action with distinct results. Lake Washington and Lake Bonney cannot be viewed through the same lens, without skewing the vision and marginalizing the outcome. In short, a scientist who understands the physical, chemical, and biological conditions of fresh water must determine and issue an appropriate permit. (Commenter #703, Sharilyn Anderson)

Response: There is nothing that precludes a lake group from hiring a limnologist to write a prescription for a lake, and nothing precludes a lake group from following that prescription. In an ideal world, Ecology would work with each individual lake group and come up with a site-specific prescription. However, Ecology's resources are limited. Under a general permit approach, prescriptive requirements have to replace the lengthy process for obtaining an individual permit. Ecology agrees that Lake Washington is very different from Lake Bonney, and is providing specific language in the final permit for Lake Washington.

151. As Whatcom County's noxious weed coordinator, I am expected to ensure the management and control of weed species designated as noxious by the Washington State Noxious Weed Control Board and as stated in Washington Advisory Code 16-750 and Revised Code of Washington, Chapter 17.10. While I understand that this permit is intended to uphold state laws regarding waterway protection, I feel that the permit, in its present draft form, will not allow county weed programs to meet their own statute requirements in a timely and cost effective manner. (Commenter #704, Whatcom County Noxious Weed Control Board)

Response: Comment noted.

152. Why is the noxious weed portion of this permit not handled by the Washington State Department of Agriculture? This is the agency that oversees the state's noxious weed program. That they are not at least collaborating on the application process seems very impractical. (Commenter #704, Whatcom County Noxious Weed Control Board)

Response: The control of any noxious weed or quarantine list weed that does not grow **in a lake** is covered by the WSDA permit. A consent decree between the Washington Toxics Coalition, People for Puget Sound, and WSDA, resulted in the in-lake noxious weed control portion of the permit to be regulated Ecology under this permit. WSDA had two representatives on a technical advisory committee that commented on drafts of this permit.

153. It is unclear as to what fees are expected for the permit and what areas a fee would cover. Can a complete river watershed or WRIA be covered under one permit and one fee? Is the fee required on a per landowner basis? A private business can adjust their fees to help cover the costs of a permit, but a public entity, such as a weed control board, is not able to do this. Most public programs have very limited operating budgets. (Commenter #704, Whatcom County Noxious Weed Control Board)

Response: Please see response to Comment #73.

154. Will there be a fee transfer of the permit in the case of a licensed applicator who leaves a project, or will that same project undergo the full application process all over again? The latter could waste significant time. (Commenter #704, Whatcom County Noxious Weed Control Board)

Response: Coverage would be issued to the County Weed Board and information about who the new applicator is should be included in your annual report.

155. Please remove the weekly reporting process. It is extremely cumbersome and redundant and will add to precious time lost for on-the-ground work. Even a monthly reporting system would be less impacting administratively on Ecology as well as on the permit holders. (Commenter #704, Whatcom County Noxious Weed Control Board)

Response: As part of the public's right to know when treatments are occurring and have occurred, we will continue to require weekly reporting for any activities conducted under this permit.

156. It is confusing why a federal ruling regarding labeled uses of herbicide in accordance with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) is not being acknowledged. Pesticides are not considered "wastes" under the recent decisions of the Ninth Circuit Court of Appeals; therefore it would not require a National Pollution Discharge Elimination System permit. (Commenter #704, Whatcom County Noxious Weed Control Board)

Response: Please see responses to Comments #37 and #100.

157. As programs struggle against declining budgets and increasing aquatic weed populations, vegetation managers face the daunting tasks of trying to control these infestations while it is still feasible. This permit stands to defeat its own purpose in protecting our waterways. By requiring redundant processes, additional administrative expenses and high fees, and greatly reducing our ability to perform the necessary work that actually protects these natural resources, Ecology could make it more possible for weed infestations to be exacerbated, and important projects to be delayed or abandoned altogether. My hope is that we can find a way to strike a balance between the letter of the law and its overall purpose. (Commenter #704, Whatcom County Noxious Weed Control Board)

Response: Comment noted.

158. I am deeply concerned that Ecology continues to try and regulate the use of registered aquatic herbicides through the implementation of a new Waste Water Discharge Permit. In view of the most recent EPA decision and rule making process undertaken by the EPA defining that the use of registered pesticides under FIFRA does not constitute the discharge of a pollutant or a waste product it appears that Ecology continues to try and regulate in areas that the agency may have no authority. (Lake Killarney, Lake Bonney, Lake Steilacoom, Gravelly Lake, Trails End Lake, Ken Lake, Aqua Vista Pond, Anderson Lake, Birch Bay Village, Lake Limerick, Lake Debra Jane, Fawn Lake, Sylvia Lake, Lake Minterwood, Lake Josephine, (Lake Washington #136, #136 ½, #494, #517, #521), #156 - Woodland Cove Homeowners Association)

Response: Please see response to Comment #86.

159. Allowing treatment to only 40% of a residential lakefront parcel and maintaining that same control zone throughout the entire five year cycle of this permit is unreasonable. As a lakefront property owner, having been actively involved in the treatment of our lake system with knowledge as to how these products behave in the water, this 40% percent standard is a regulatory requirement that will only discourage treatment. I am curious as to the standard and or data Ecology used in developing this 40% criteria. Can you please forward to me the data that supports your decision adopting this 40% criterion? (Lake Killarney, Lake Bonney, Lake Steilacoom, Gravelly Lake, Trails End Lake, Ken Lake, Aqua Vista Pond, Anderson Lake, Birch Bay Village, Lake Limerick, Lake Debra Jane, Fawn Lake, Sylvia Lake, Lake Minterwood, Lake Josephine, (Lake Washington #136, #136 ½, #494, #517, #521), #156 - Woodland Cove Homeowners Association)

Response: Ecology is revising the final permit language to change the requirement that only 40 percent of a residential lakefront parcel can be treated. The areas set aside for no treatment must remain the same for the duration of the permit coverage. See Condition S1 of the final permit.

160. The proposed restrictions associated with both weed and algae control activities appear to be in direct conflict with the very same laws and regulations that Ecology has mandated to protect the waters of Washington State. (Lake Killarney, Lake Bonney, Lake Steilacoom, Gravelly Lake, Trails End Lake, Ken Lake, Aqua Vista Pond, Anderson Lake, Birch Bay

Village, Lake Limerick, Lake Debra Jane, Fawn Lake, Sylvia Lake, Lake Minterwood, Lake Josephine, (Lake Washington #136, #136 ½, #494, #517, #521), #156 - Woodland Cove Homeowners Association)

Response: Comment noted.

161. The inability to control aquatic weeds and algae is a threat to the health of our waters. Increased weed growth promotes the degradation of oxygen levels, increases sedimentation and reduces light penetration. These are all critical components of a healthy biological community. (Lake Killarney, Lake Bonney, Lake Steilacoom, Gravelly Lake, Trails End Lake, Ken Lake, Aqua Vista Pond, Anderson Lake, Birch Bay Village, Lake Limerick, Lake Debra Jane, Fawn Lake, Sylvia Lake, Lake Minterwood, Lake Josephine, (Lake Washington #136, #136 ½, #494, #517, #521), #156 - Woodland Cove Homeowners Association)

Response: Ecology is charged with protecting a number of beneficial uses within each water body. Plants and algae do provide beneficial habitat and foraging areas for fish and wildlife, and this must be balanced with the recreational and aesthetic uses of a water body.

162. There are numerous minor technical problems associated with the ability of hired consultants to perform the tasks identified in the new permit without violating the conditions of the permit. Hopefully these issues will be addressed by our licensed applicators. (Lake Killarney, Lake Bonney, Lake Steilacoom, Gravelly Lake, Trails End Lake, Ken Lake, Aqua Vista Pond, Anderson Lake, Birch Bay Village, Lake Limerick, Lake Debra Jane, Fawn Lake, Sylvia Lake, Lake Minterwood, Lake Josephine, (Lake Washington #136, #136 ½, #494, #517, #521), #156 - Woodland Cove Homeowners Association)

Response: These issues are being addressed in the final permit.

163. The current draft permit calls for all water quality data obtained about a lake to be turned over to Ecology. This appears to be counterproductive and would discourage lake associations from being true stewards of our lake by investigating potential pollution sources. Ecology needs to encourage these types of positive investigative actions. (Lake Killarney, Lake Bonney, Lake Steilacoom, Gravelly Lake, Trails End Lake, Ken Lake, Aqua Vista Pond, Anderson Lake, Birch Bay Village, Lake Limerick, Lake Debra Jane, Fawn Lake, Sylvia Lake, Lake Minterwood, Lake Josephine, (Lake Washington #136, #136 ½, #494, #517, #521))

Response: Ecology agrees that the submittal of all water quality data is too broad. The language in S9 of the permit has been changed to reflect this comment.

164. The past system was plagued with administrative problems associated with permit reviewers imposing personal philosophies and opinions about herbicide use while disregarding common science and agency policy. This new system allows Ecology to build new bridges between your agency and lake groups and perhaps abide by the slogan on your business card “Working with you for a better Washington”. (Lake Killarney, Lake Bonney, Lake

Steilacoom, Gravelly Lake, Trails End Lake, Ken Lake, Aqua Vista Pond, Anderson Lake, Birch Bay Village, Lake Limerick, Lake Debra Jane, Fawn Lake, Sylvia Lake, Lake Minterwood, Lake Josephine, ([Lake Washington #136, #136 ½, #494, #517, #521] , and #156 - Woodland Cove Homeowners Association)

Response: Comment noted.

165. We are specifically concerned with the condition limiting a percent of treatment per lot under the control section of this permit. The majority of our lots are 50 to 100 feet wide. There are no herbicide technologies available that allow of the partial treatment of areas this small. This condition is not workable and needs to be revised back to previous permit conditions that focus on protecting a percentage of the total plant areas present in the lake. (Ohop Lake, Beaver Lake, #455 - Town of Hunts Point)

Response: The permit language is being modified to address this issue. See Condition S1 of the final permit.

166. In cases where it is necessary for us to treat noxious aquatic weeds, our objective is to eradicate those species in the areas of the lake we are charged with managing. The concept of control and the limitations presented in this section of the permit will place an undue burden on our weed control efforts in violation of state law. When dealing with noxious aquatic weeds, we need to be able to effectively target them, and this permit limits that ability. (Ohop Lake, Beaver Lake, #455 - Town of Hunts Point, #34 – Newport Shores Yacht Basin Association)

Response: The permit language is being modified to address this issue. See Condition S1 of the final permit.

167. The costs associated with this permit need to be minimized. Based on recent Federal Statements and Case Law, it is probable that a waste discharge permit is not necessary for the application of these materials because they are clearly not waste or pollution. In addition, state laws require your agency to minimize the burden on noxious aquatic weed control and not use any permit or regulatory authority to impact the control of noxious aquatic weeds. Excessive permit costs and legal notification costs could clearly conflict with state law. They need to be reduced to the lowest possible level. (Ohop Lake, Beaver Lake, #455 - Town of Hunts Point, #34 – Newport Shores Yacht Basin Association)

Response: This permit meets the legal requirements for a permit issued by Ecology. Permit fees are established by Chapter 90.48 RCW and implemented through Chapter 173-224 WAC, which is currently under review.

168. I am a resident of Newport Shores on Lake Washington. We are a neighborhood of 340 homes – 120 are waterfront homes, yet virtually all of us enjoy the Lake. Our community has a canal system, a considerable amount of shoreline, and we operate a marina. Our waters and facilities have been plagued by noxious aquatic weed growth period. Eurasian Milfoil, Brazilian Elodea and Curly Leaf Pondweed growth have posed a safety threat to our children

swimming (we have right at 400 kids in our neighborhood!!). The plants have clogged the drives on our boats and caused severe property damage. The weeds have degraded the water quality in our area of the lake for fishing. Any marina fire has to be fought from the water, and this excessive growth will plug the pumps of fireboats causing loss of property and potentially life. (Newport Shores)

Response: The final permit will allow treatment of these areas.

169. The Department of Ecology is required by law to have a permit for the management of these noxious weeds and we do not want you to use that permit authority to burden weed control efforts. This past year is the second time in the last five years the Department failed to provide this permit. Without being able to control these invasive weeds, my neighbors and I have suffered greatly. (Newport Shores)

Response: This permit is due to be issued March 1, 2006 and will be available for the 2006 treatment season.

170. The new permit has a number of conditions that will burden weed control efforts. The public legal notice requirement is too wordy and costly for our group. You are unreasonable with your requirement to avoid treating more than 40 percent of one lot – the average lot is 50 to 100 feet in our area and the herbicides necessary to deal with these noxious weeds will not work your way. Your concept of control vs. eradication will burden noxious weed control efforts. While we can't hope to eradicate or maintain the noxious weed population lake wide, we have an obligation to remove them from the waters they impact our safety and water quality. We want to safely swim, we want to navigate freely in boats, and we want a healthy oxygenated water system for fish!!! (Newport Shores)

Response: The legal notice is required by state law. Please see response to comment #159.

171. The majority of the conditions in your control section will burden weed control efforts. There are requirements to follow fish timing windows in this permit. Previous permits provided the choice to the applicator to send a letter to the regional biologist informing them of the proposed activity. Your windows are without merit. Your office gives the chemical Reward a fish timing window when this very product is used in the hatcheries at much higher rates and longer exposures to treat salmon and trout early in their life for gill diseases. There has to be an option for the applicator to have the choice, this puts the burden on the Department of Fish and Wildlife to justify this for each site. (Newport Shores)

Response: The Washington State Department of Fish and Wildlife (WDFW) created a standard fish timing window for the outmigration of juvenile salmon in lakes throughout Washington State. Each permittee is required to comply with these fish timing windows for any products deemed by Ecology to have potential negative impacts on juvenile salmonids. WDFW provided scientifically-based, standardized windows to expedite decision-making for the pesticide permit application process.

172. Your department needs to issue a permit that is workable and meets the needs of our community. This permit needs to be in place so we can get our weeds back under control immediately. (Newport Shores)

Response: The permit is due to be issued March 1, 2006.

173. Carillon Properties has a vital interest in the completion of the process to adopt an Aquatic Plant and Algae Management General Permit. This letter is written for the Carillon Point Marina which commends the Department of Ecology for bringing the permitting process to this point.

Carillon Point has 200 tenants who enjoy an active boating life on Lake Washington and surrounding waters. Carillon Point is located on the east side of Lake Washington and has had a substantial marina operation since early 1986. During that time, the surrounding community has grown and is now one of the most attractive areas on the east side of the lake.

Unfortunately, with increased globalization during that time, native and non-native plants and weeds have been introduced into the fresh waters of Lake Washington that have had a significant and adverse impact on those waters. It is with this background that we may now have an opportunity to conduct a major effort to control the invasive aquatic vegetation with adoption of the new permit.

The growth of the weeds over the last 15 years has been changing from milfoil to Brazilian elodea. The elodea is much more aggressive than milfoil and is gradually crowding it out. The combined weeds have resulted in vegetative crowding of the shallower waters, under twenty feet in depth. The crowding is continuing to produce a decreased amount of oxygen in the waters as the plants contribute to sediment growth and a darkening of the fish areas. We understand that research has shown that the darkened waters and decreased levels of oxygen adversely impact salmon activity in our area.

The weeds are continually being torn from their stems and/or roots and provide floating mats during the summer and early fall that begin to resemble garbage dumps in appearance and odor. These are waters that the public relies upon to provide transportation and recreation for our citizens. We believe that disruption of such activity further degrades the water quality. (Carillon Properties)

Unless we are able to control the weeds and their growth, the density together with the ultimate surface matting of the waters seriously impact usage. We are particularly aware of three specific instances that have contributed to loss of life and property damage:

1. Several years ago, there were reports of two drownings in or near Renton, WA as a result of swimmers becoming entangled in the weeds.
2. Three years ago and since there has been additional property damage from marina fires as a result of disruption of the pumping systems of Seattle Harbor boats that are the first responders to waterfront fires. Once the systems are clogged, the fire fighting apparatus must be shut off and the pump intakes cleared to resume pumping water onto the fire.

3. In the fall of 2004, a boat was backing down in weed-infested waters when the propellers and rudder were immobilized by the weeds. The boat was unable to halt its sternway and ended up on the back deck of a houseboat in the vicinity. Fortunately, there were no personal injuries in the mishap.

4. Marina owners have been burdened with addressing numerous complaints associated with egress and ingress into there slip. These problems are the result of the vessels cooling intakes becoming clogged, a common occurrence when weed growth is not controlled within the shallower waters of the marinas.

5. The weeds have grown and expanded in Yarrow Bay to the point where at times, vessels have asked to seek refuge in the Carillon Point Marina. Consequently, Carillon Point hand picks yards of milfoil out of the marina and all of the milfoil from Yarrow Bay to create a safe environment for the tenants.

The safety issues by themselves contribute unnecessarily to the loss of values. In addition, the amount of acreage at issue makes it extremely expensive to control the weeds. Attempts of non-herbicidal controls by cutting and bottom coverings have been attempted by surrounding marinas. Bottom coverings failed when the covering were disrupted by the prop washes of power boats and also resulted in boats losing control due to fouled propellers and rudders. While cuttings are somewhat feasible in open waterways, it is not possible for the mowers to enter the marina slips. In addition, the cutting must now be done at least twice a year because of the rapid and early growth of Brazilian elodea, further contributing to the expense. (Carillon Properties)

We and others have continually attempted to control the weeds with herbicides, but because of a number of reasons associated with the permit process we have been prevented from treating our adjacent waters. The U.S. (sic) Department of Ecology has certified certain herbicides, which is applied in their recommended quantities are deemed not to pose a hazard to humans or animals and fish. We applaud the State Department of Ecology for the tables designating which herbicides are useable and the timing of application.

Thank you for this opportunity for comment. We anticipate a workable solution for the treatment of non-native weeds with the adoption of this permit. (Carillon Properties)

Response: Comments noted.

174. As a recreational boater I have been transiting these waters to the Government Locks since 1970. The weed problem has evolved to the point where there is serious threat to the safety of vessels and swimmers. The weeds also clog fire fighting water pumps and drafting hydrants. I have recently experienced fouled underwater running gear and clogged engine water lines, from heavy concentrations of weeds even in 20 feet of water. There are too often problems with weeds around my prop and shafts, resulting in failure to properly reverse.

It is my understanding that the United State Department of Ecology has approved certain herbicides for effective weed control as safe. Inasmuch as these waters are legally part of the Navigable Waters of the United States, local government not only is precluded from policies

that unreasonably restrict navigation in such waters, it has a responsibility to promote navigation rights. (Commenter #705, William Grady)

Response: Comment noted.

175. Still having trouble with the lot line business. I think it is going to put undue stress and cost to the people paying for treatment and those applying. (Commenter #45, Dave Barber)

Response: Ecology is revising the permit language to change the requirement that only 40 percent of a residential lakefront parcel can be treated. See Condition S1 of the final permit.

176. I think that those of us with lake plans updated or otherwise that have the treatment areas already outlined and been using for years should be able to continue with that. It certainly fits all the Criteria outlined in the new permit. (Commenter #45, Dave Barber)

Response: Ecology will allow more flexibility to lake groups to decide where the treatment areas should occur in the lake.

177. We are deeply concerned regarding the Department of Ecology making changes to our National Pollutant Discharge Elimination System (NPDES) permit that was approved until June of 2007.

This permit was finally approved March of 2004 after a full year of very intensive work by a committee from our organization. The work required submitting an original application of 61 pages that was rejected 5 times before approval (with one section growing from 20 to 54 pages and the total document growing to 115 pages). This document is in the files of Sylvia Lake at the Department of Ecology.

This was not a pleasant experience, the committee felt the permit process was an attempt to delay and/or keep us from any treatment at all. Through our efforts we were able to finally get a permit and became the first lake in Washington State, with only nuisance weeds and algae to treat. How many lakes with only nuisance weeds and algae have been permitted since the process started? (Commenter #6, Sylvia Lake Country Club)

Response: About 30 lakes in our Southwest and Northwest regions that have been permitted to control nuisance weeds and algae under the last NPDES permit.

178. Sylvia Lake is an 11-acre private lake without noxious weeds, however, it is very important to treat, as needed, for Nuisance Weeds and Algae.

We are concerned that with the elimination of the Aquatic Nuisance Plant and Algae Control permit, the small lakes, have again, been overlooked just as they were with the original permits. Many important items relating to small lake problems and solutions have been left out of the new permit. (Commenter #6, Sylvia Lake Country Club)

Response: Small lakes are covered under the new permit.

179. Where does it allow for treatment of just nuisance plants and algae? (Commenter #6, Sylvia Lake Country Club)

Response: Section S1.A.2.a. discusses the control of native plants, and Section S1.A.2.b. discusses control options for algae.

180. Were the interests of small lakes represented on the committee? We would have been glad to participate as we did on the NPDES committee. (Commenter #6, Sylvia Lake Country Club)

Response: Three lakes representatives participated on the External Advisory Committee; one representative from a small lake (less than 20 acres); one representative from a medium sized lake (100-300 acres); and one representative from a large lake (more than 500 acres).

181. Will the size of the water body, the water testing if under 10-acres and the treatment area, be taken into account as it is in the current permit? (Commenter #6, Sylvia Lake Country Club)

Response: This permit does not have monitoring requirements if the treatment area is greater than ten acres, and as currently written, there are no allowances based on water body size.

182. The treatment of 40% of the Littoral Zone will not work on small lakes leaving 60% untreated. (Commenter #6, Sylvia Lake Country Club)

Response: Ecology is revising the permit language to change the requirement that only 40 percent of a residential lakefront parcel can be treated. See Condition S1 of the final permit.

183. Will equal treatment be given to small lakes, without the political influence held by associations as on Lake Washington? (Commenter #6, Sylvia Lake Country Club)

Response: Ecology treats all applicants equally.

184. How will the DOE be able to control and monitor all of the applications, on an equal basis? (Commenter #6, Sylvia Lake Country Club)

Response: The new permit requires applicators to coordinate with regional inspectors when an inspector chooses to be on-site while a treatment takes place.

185. We are very pleased that Environmental Protection Agency and the courts have been instrumental in this change being made by the Department of Ecology. We are disappointed that DOE still feels obligated to permit and control Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) approved chemical applications by state licensed applicators.

(Commenter #6, Sylvia Lake Country Club)

Response: Please see responses to Comments #1 and 2.

186. How many times in Washington State has there been damage caused by the proper application of chemicals to a body of Washington State water. We have treated Sylvia Lake since April of 1971 without a single fish being killed. We also have not had a fish kill due to the decaying of plant life. We have had, increased warming of the lake due to plant life.
(Commenter #6, Sylvia Lake Country Club)

Response: Ecology is charged with balancing the beneficial uses of a water body with protecting water quality. This includes protecting portions of the littoral zone, so that habitat remains for fish and wildlife after an herbicide treatment. Plant growth is part of the natural lake ecosystem, and is important to protect.

187. The Seattle Yacht Club has a vital interest in the completion of the process to adopt an Aquatic Plant and Algae Management General Permit. We have 5,000 participants who enjoy an active boating life on Lake Washington and surrounding waters. We are located on Portage Bay just off the Lake Washington Ship Canal, and have had a substantial marina operation there since the early 1900s. During that time, the surrounding community has grown and is now one of the most attractive areas in Seattle. (Commenters #17, #21)

Response: Ecology anticipates issuing the permit March 1, 2006.

188. With increased globalization, non-native plants and weeds have been introduced into the fresh waters of the Bay and Lake Washington that have significantly and adversely impacted those waters. We now have an opportunity to conduct a major effort to control the invasive aquatic vegetation with adoption of the new permit. (Commenters #17, #21)

Response: Comment noted.

189. The growth of the weeds over the last 15 years has been changing from milfoil to Brazilian elodea. The elodea is much more aggressive than milfoil and is gradually crowding it out. The combined weeds have resulted in vegetative crowding of the shallower waters, under twenty feet in depth. The crowding is continuing to produce a decreased amount of oxygen in the waters as the plants contribute to sediment growth and a darkening of the fish areas.

The weeds are continually being torn from their stems and/or roots and provide floating mats during the summer and early fall that begin to resemble garbage dumps in appearance and odor. These are waters that the public relies upon to provide transportation and recreation for our citizens. We believe that disruption of such activity further degrades the water quality.

Unless we are able to control the weeds and their growth, the density together with the ultimate surface matting of the waters seriously impact usage. We are particularly aware of three specific instances that have contributed to loss of life and property damage:

1. Several years ago, there were reports of two drownings in or near Renton, WA as a result of swimmers becoming entangled in the weeds.
2. Three years ago and since there has been additional property damage from marina fires as a result of disruption of the pumping systems of Seattle Harbor boats that are the first responders to waterfront fires. Once the systems are clogged, the fire fighting apparatus must be shut off and the pump intakes cleared to resume pumping water onto the fire.
3. In the fall of 2004, a boat was backing down in weed-infested waters when the propellers and rudder were immobilized by the weeds. The boat was unable to halt its sternway and ended up on the back deck of a houseboat in the vicinity. Fortunately, there were no personal injuries in the mishap.
4. Marina owners have been burdened with the problem of addressing numerous complaints associated with damage and insurance claims. These problems are the result of the vessels cooling intakes becoming clogged, a common occurrence when weed growth is not controlled within the shallower waters of the marinas.
5. The weeds have grown and expanded in Portage Bay to the point where the small boats in our summer sailing program for over 300 students have become fouled by the weeds. Such growth has caused a few capsizes endangering these youngsters. While we are all required to wear life jackets in the boats, the entanglement of their bodies has produced a few panic situations. (Commenters #17, #21, #33 – Seattle Yacht Club)

The safety issues by themselves contribute unnecessarily to the loss of values. In addition, the amount of acreage at issue makes it extremely expensive to control the weeds. Attempts of non-herbicidal controls by cutting and bottom coverings have been attempted by surrounding marinas. Bottom coverings failed when the covering were disrupted by the prop washes of power boats and also resulted in boats losing control due to fouled propellers and rudders. While cuttings are somewhat feasible in open waterways, it is not possible for the mowers to enter the marina slips. In addition, the cutting must now be done at least twice a year because of the rapid and early growth of Brazilian elodea, further contributing to the expense. (Commenters #17, #21, #33 – Seattle Yacht Club)

We annually host the Opening Day Parade in the Lake Washington Ship Canal. While the main waterway is not impacted, the surrounding waters providing temporary moorage and anchorage for over 300 participating boats may lead to a decrease in participation. These boats average five people each, and their contribution to our economy and prestige is immeasurable. (Commenters #17, #21, #33 – Seattle Yacht Club)

Response: Comments noted.

190. We have continually attempted to control the weeds with herbicides, but because of a number of reasons associated with the permit process we have been prevented from treating our adjacent waters. The U.S. Department of Ecology has certified certain herbicides, which is applied in their recommended quantities are deemed not to pose a hazard to humans or animals and fish. We applaud the State Department of Ecology for the tables designating which herbicides are useable and the timing of application. (Commenters #17, #21)

Response: Comment noted.

191. We are writing to support the granting of the General Permit. We have moored a boat in Portage Bay for the last 35 years. On several occasions we have encountered engine heating due to weeds being sucked into the sea water intake. This condition causes someone to dive into the water to clear the intake.

During the last two years we have had 6 grandchildren in the Seattle Yacht Club summer sailing program. Last year the aquatic weeds were particularly bad. The children had problems steering the boats. One of the required tests is for the child to jump off the dock with their life jacket, put the jacket on and swim 50 feet. As our 8 year old grandson jumped off the dock his momentum carried him beyond the cleared area, and he and his life jacket became entangled in the weeds. He saved himself by hugging his life jacket and surfacing. Needless to say it was a terrifying experience for all involved.

We are Please help clean up our previously beautiful lake water by granting the Aquatic Plant and Algae Management General Permit. Thank you for your considerations.
(Commenter #43, William and Bettylee Cramer)

Response: Comment noted.

192. Thank you for the opportunity to comment on the issue of milfoil and Brazilian elodea in the waters and bays of beautiful Lake Washington. My wife Christy and I, life long fans of the water, are natives of Puget Sound....I grew up in Edmonds and Christy on Mercer Island. Our two sons, Patrick and Alex, are teenagers and can't seem to get enough time on the water...whether it's swimming, wake boarding, tubing or fishing. Like most fans of the water, we have become quite concerned with the growth and volume of nonnative plants in the bays and waterways. Our concerns are two: Safety....The boys love to swim...and Christy and I get very concerned when we discover them (as well as ourselves) swimming in areas of weed. Many times when they swim while boarding in one of the bays the weeds are just below the surface and we/they don't initially see it from the surface. There is nothing more frightening than the feeling of something grabbing at your legs as you swim...and for people of all ages, the loss of confidence in deep water is obviously a concern.

Trends and Water Quality....Being natives, we do recall a time when weed activity was not nearly what it is today. If we are to do anything as a community to control the weeds, we must act soon as the trends are not moving in a favorable direction. The beauty of the Lake Washington is one of the key contributors to beauty of our community....let's do the right thing to maintain the health and beauty of this asset!

Thanks for reading--lets all work together to find a solution for the treatment of noxious and nuisance weeds. (Commenter #44, Dan Smith)

Response: Comment noted.

193. Concerning the weeds in Portage bay.....this summer my sailboat would get stuck in the weeds about 50 yards off dock 3 at the Seattle Yacht Club....I could power off but not easily.....keel is 6.5 feet....the weeds are getting worse and taking over....thanks for your interest....(Commenter #106, St. Elmo Newton) (sic)

Response: Comment noted.

194. We are members of the Seattle Yacht Club and moor our 38 foot cruiser on Dock #1 at the Portage Bay facility. During the summer of 2004 and 2005 the weed growth has been excessive and resulted in the fouling of our propellers, although the draft of our boat is less than 3 feet.

The weed particles cut up by the propellers have resulted in the clogging of engine cooling water intakes and, in one instance, completely clogged our genset water intake, resulting in a \$100.00 plus repair bill and the services of a diver to clear the intake.

We strongly support the efforts of the SYC to obtain a general permit allowing use of approved herbicides to control the growth of these weeds. (Commenter #133, Curtis P. Bailey and Jeffrey S. Bailey)

Response: Comment noted.

195. I am member of the Seattle Yacht Club and the Queen City Yacht Club. I have moored my boat in Portage Bay for the past ten years. For several years, I have been concerned about the milfoil growth. Last spring, I had a cooling problem in my generator, and a few months later, I developed a cooling problem in my port engine while underway. In both cases, the cause was clogged raw water intake hoses. The problem is difficult to detect because the hose plugs up and the raw water strainer is clear when visually inspected.

I believe it is in the best interest of all concerned that measures be taken to manage the growth of these plants. (Commenter #137, Leonard Almo)

Response: Comment noted.

196. I hope that Ecology will allow us to control Portage Bay invasive aquatic weeds using herbicides.

The proliferation of Milfoil and Brazilian Elodea in the waters of Portage Bay, Lake Washington and Lake Union threatens continued public use of our waterways. For example, I have lost control of my 15 ton vessel when weeds fouled my rudder; a hazard that is innerving to the operator and, need I say it, very dangerous to others. (sic)

Mowing the weeds is a temporary expedient. We have done it in our moorage but like the mowing or pruning of any plant, rapid growth appears to be enhanced. Moreover, the process is much too costly for its use in the thoroughfares.

Herbicides appear to be the only reasonable and effective means of control. I understand that the appropriate Federal and State Agencies have approved chemical treatments that will do the job without harm to people, fish or wildlife.

If it is in your power to expedite our permit to apply herbicide, please help us to obtain it. (Commenter #148, Frederick Hayes)

Response: Comment noted.

197. Marinas and Yacht Clubs need to be included in those areas defined by Ecology as “high use”. High use areas under this current draft are authorized to treat 100% of noxious weed infestations. (Commenter #136 ½, David Fluke)

Response: Ecology agrees and is revising the language in the final permit to include marinas and yacht clubs in the definition of high use areas.

198. As the department of Ecology considers what and how to handle the weed problems in our waters, I would like to share with you and your department what I experienced last summer.

We keep our family boat at the Seattle Yacht Club Portage Bay moorage. When we started on our summer trip with 4 of our grandchildren, my wife and I, I know there was a problem when I had trouble maneuvering at the locks. A quick inspection showed that my port propeller and rudder were fouled with milfoil. Because we were in a navigable waterway, we needed to wait till I cleared the locks to deal with the problem. (sic)

Once clear of the locks and away from other vessels, I tried to dislodge the weeds were lodged so tightly and with the weight of them, this action caused me to break the propeller shaft and lose the propeller in Puget Sound.

Besides the repair bill of close to \$6,000, we lost the vacation trip with our grandchildren due to the weed problem.

The boatyard informed us that we were not the only ones to have had this happen to them.

The weeds are a major safety issue and getting worse each year they are not dealt with. All of us are hoping that your department will do the right thing and address this issue with a permanent solution. (Commenter #151, Larry Magnan)

Response: Comment noted.

199. As Friends of Portage Bay, the Seattle Yacht Club and the Queen City Yacht Club have a vital interest in public access to public waters, preserving Lake Washington and Lake Union in their natural condition, and are mindful of the economic costs and benefits of government regulations. The Seattle Yacht Club and Queen City Yacht Club, with a combined membership of approximately six thousand adult participants, are located on Portage Bay just off the Lake Washington Ship Canal. Each club has maintained substantial marina operations

since the early 1900s.

Unfortunately, the introduction of non-native plants and weeds and the unnatural increase in native nuisance weed has significantly and adversely impacted the waters and bays of Lake Washington and Lake Union, especially Portage Bay. Good environmental stewardship, as well as good public policy, demands that these aquatic plants be controlled and in the case of non-native species, eliminated. The U.S. Department of Ecology (sic) has certified certain herbicides, which if applied in their recommended quantities, are deemed not to pose a hazard to humans or animals and fish. While we believe that the existing comprehensive Federal regulatory system protects the public interest and would much prefer the State not create its own regulatory scheme, if the State determines to establish a parallel regulatory system, we appreciate the opportunity to participate in its draft permit process.

The types of aquatic weeds in the subject waters over the last fifteen years have been changing from milfoil to Brazilian elodea. The elodea, not a native plant, is much more aggressive than milfoil and is gradually crowding it out. The combined weeds have resulted in vegetative crowding of the shallower waters, under twenty feet in depth. The crowding is continuing to produce a decreased amount of oxygen in the waters as the plants contribute to sediment growth and a darkening of the fish areas. We understand that research has shown that the darkened waters and decreased levels of oxygen adversely impact salmon, trout and bass activity in our area.

The weeds are continually being uprooted and cut from their stems, thus creating floating mats during the summer and early fall that begin to resemble garbage dumps in appearance and odor. These floating mats interfere with an area that the public relies upon to provide transportation and recreation.

Our collective efforts to control these weeds through non-chemical methods, including harvesting, have failed to prevent their spread and growth. When the clubs have been allowed to apply herbicides in the past, we have witnessed excellent control. During these periods of clear water, native fish, including trout and salmon, have re-appeared in marina areas. Access to the waters by the public has been dramatically improved, with kayakers, swimmers, fishermen and boaters able to negotiate the inlets around the marinas.

The density of aquatic growth, together with the ultimate surface matting of the waters, seriously impacts usage and safety. The presence of these weeds in their current concentrations and locations increases the risks to life and property. Consider the following:

- 1) Increased concentrations of these weeds raise the risk of swimmers becoming entangled and possibly drowning;
- 2) During the past three years, there has been additional property damage from marina fires as a result of the disruption of the pumping systems of Seattle Harbor Patrol boats. Historically, these boats are the first responders to waterfront fires. Once the systems are clogged, the fire fighting apparatuses must be shut off and the pump intakes cleared to

resume pumping water onto the fire. This results in time lost, which in turn increases the risk of further personal injury and property loss.

3) In the fall of 2004, a Seattle Yacht Club boat was backing down in weed-infested waters when the propellers and rudder were immobilized by the weeds. The boat was unable to halt its sternway and ended up against the back deck of a houseboat on the other side of Portage Bay. The Queen City Yacht Club has experienced numerous similar events within its waterways, with boats becoming entangled and endangering property.

4) Access to the many houseboats and to the marinas that line the shores of the areas is often difficult from the adjoining streets. Fire fighters must lay lines long distances from hydrants down the docks to fight over the water fires. A limited city water supply due to its reservoir system, and low pressure, also inhibits their firefighting capability. It is critical to have a continuous and unrestricted supply of water from the lake to suppress these fires. There have been at least three major marina fires in the past few years on Lakes Washington and Union. The presence of liveaboards in some marinas, and the explosive nature of marina fires, makes this an especially important consideration. Aquatic weeds threaten the effectiveness of pumping water from the lake and jeopardize the engine cooling intakes and directional control (propellers) of fire boats. Control of the weeds, therefore, is vital to the public safety and preservation of property.

5) Marinas present a unique combination of factors: high density use, high levels, of flammable materials, and people on or around the boats. Because of this combination of features, aquatic growth which might interfere with fire fighting capabilities creates a unique hazard to both property and personal safety. If the State decides to implement its own permitting system for the treatment of aquatic plants, we urge it to consider exempting marinas from such a state system or alternatively treating marinas differently in recognition of the heightened risks caused by aquatic growth in and around marinas. Such exceptions might also be appropriately considered for neighborhoods such as Portage Bay houseboats, Roanoke Reef, Newport Shores and over the water developments such as the AGI and Marina Mart buildings and residential over the water condominiums at Madison Park, Rainier Beach and Leschi, where risks of fire have potentially much larger consequences than in the more typical waterfront situation.

The safety issues by themselves contribute unnecessarily to the loss of values. In addition, the amount of acreage at issue makes it extremely expensive to control the weeds. We have attempted non-herbicidal controls by cutting and bottom coverings. With slightly more than thirteen acres at the Seattle Yacht Club and nearly ten acres at the Queen City Yacht Club requiring treatment, it is not feasible to expect an entity to spend the money necessary to hire diver to pull the plants one by one. Bottom coverings failed when the coverings were disrupted by the prop washes of power boats and also resulted in boats losing control due to fouled propellers and rudders. While cuttings are somewhat more feasible in open waterways, it is not possible for the mowers to enter the marina slips. In addition, the cutting must now be done at least twice a year because of the rapid and early growth of Brazilian elodea, further contributing to the expense. The cost of cutting is more than double the cost of controlling the weeds through chemical treatment.

Further, cutting the weeds does not reduce the overall biomass on the lake bottom. Cutting also produces residual leavings, which float on the top and must be removed, as well. Hence, the marinas and houseboat owners are paying for a service that does not economically address and mitigate the problem.

Thank you for this opportunity for comment. Our respective clubs have been stewards of Portage Bay for ninety years and will be stewards for generations to come. We have a clear and vested interest, therefore, in its health and vitality. Each club has taken steps in the past to keep the bay clean and diligently monitors its activities to ensure its continued health. We see the chemical treatment of the bay as the only viable method for maintaining its health against the invasive, non-native noxious weeds and the over-proliferation of nuisance weeds. (Commenter #388, Friends of Portage Bay)

Response: Comments noted.

200. The Seattle Yacht club has a vital interest in the completion of the process to adopt an Aquatic Plant and Algae Management General Permit. This letter is written for the Club which commends the Department of Ecology for bringing the permit process to this point. We appreciate the opportunity to comment on the draft permit, and have a few comments.

The Club, with 5,000 participants who enjoy an active boating life on Lake Washington and surrounding water, is located on Portage Bay just off the Lake Washington Ship Canal, and has had a substantial marina operation since the early 1900s. During that time, the surrounding community has grown and is now one of the most attractive areas in Seattle.

Unfortunately, with increased globalization during that time, non-native plants and weeds have been introduced into the fresh waters of the Bay and Lake Washington that have significantly and adversely impacted those waters. It is with this background that we may now have an opportunity to conduct a major effort to the control the invasive aquatic vegetation with adoption of the new permit. (Commenter #33, Seattle Yacht Club)

Response: Comment noted.

201. We are unclear as to what courses are available in the event the new Waste Discharge Permit is not approved in time for the 2006 treatment season. Will use of the old NPDES permit be required? We note that the old NPDES permit system will only be revoked after the new Permit is approved. (sic) (Commenter #33, Seattle Yacht Club)

Response: This permit is scheduled to be issued on March 1, 2006, and its effective date will be April 1, 2006. Once this permit is issued, the Aquatic Plant and Algae NPDES permit will be revoked.

The Meydenbauer Yacht Club (MBYC) is vitally interested in having an equitable and environmentally friendly State Permitting Program, and supporting processes and guidelines, for management of aquatic plants and algae that have taken over many of the shallow waterways of Lake Washington, Portage Bay, and Lake Union.

MBYC has been in existence for over 60 years on the shores of Meydenbauer Bay in Lake Washington just south of downtown Bellevue. Our total membership of over 600 family members has prided ourselves on maintaining a very clean facility consisting of a Clubhouse, grounds, and a marina of 106 slips for our membership.

We try to create a neighborhood friendly environment and provide the public with such services as a Youth Sailing Program for over 280 young people each summer in cooperation with the city of Bellevue Parks Department, use of our facility by the Coast Guard Auxiliary and the US Sail and Power Squadron, participation in the annual special People's Cruise put on by Seafair, and use of our facility providing reciprocal guest moorage to sister yacht clubs of Washington, Oregon, and Canada.

Adjacent to us along the shore are two city of Bellevue marinas, Meydenbauer Bay Park, Clyde Hill Beach Park, and private homes, with many docks. To our southeast are condominiums and apartments, on the water and upland who view the bay. Although we do not intend to represent these other entities in the letter to you, we have been in contact with many of them and can assure you that their opinions are similar in content to those of MBYC.

By sight alone, one can see that we are gradually losing Meydenbauer Bay as a navigable, recreational, and aesthetic waterway to uncontrolled growth of noxious weeds, namely Brazilian elodea and Eurasian water milfoil. The water is shallow with a maximum depth in the middle no more than 25 feet resulting in the summer months to be a fertile, warm, sunlit, growing ground for these weeds. In many areas the negative impact is becoming severe; you cannot row a small boat or paddle a kayak or canoe, swimming is dangerous, and boat engine water intakes become clogged because the weeds are so thick.

Responsible care of the bay requires that excessive plant growth be controlled. For many years MBYC has been able to periodically use U.S. Government and Washington State approved herbicides, which when applied per government directed application methods by professional applicators, have not posed any noticeable threat to fish, animals, or humans.

Because the State would not issue application permits in 2005 to have professional applicators treat the noxious weeds with previously approved methods, MBYC and the City of Bellevue Marinas resorted to mowing and harvesting the noxious weeds in order to keep our marinas navigable. The results were short lived as the free floating weed remnants appear to just repopulate themselves, thus exacerbating the problem. It is also logistically impossible for the many shoreline property owners, condominium, and apartment dwellers to arrange for separate or joint noxious weed mowing and harvesting.

In summary, the dense growth of noxious weeds and the inevitable free floating bio masses of uprooted weeds:

- 1) Present a hazard to swimmer such as our youth sailing children who swim in this part

of the bay by accident when their sailboats tip over, or by choice. The entanglement of weeds can be dangerous and could cause drowning.

2) Present a hazard to fire fighting equipment used to combat marina fires which depend on the ability to pump water out of the lake. The existence of massive noxious weed concentrations increases the probability that the fire pumps will become clogged and useless.

3) Present a hazard to navigation and operation of both sailing and power vessels, whether small or large, because the weeds get caught in water intakes, burning out water pumps and damaging engines.

4) Present a risk to the continued viability of our Youth Sail Program because our small center keeled Youth Sailing boats get caught in noxious weeds growth and floating masses.

5) Are detrimental to the economics of the region and to homeowners, marina operators, and Yacht Clubs, as mowing and harvesting costs about three times more than an application of an approved herbicide.

6) Cannot be managed by continuous mowing and harvesting because it exacerbates the problem.

We believe that the best viable method for control of noxious aquatic weeds in Meydenbauer Bay is an equitable State Permitting process that allows for the proper application of government approved herbicides.

Safe and enjoyable use of our natural resources is a citizen's right in the State of Washington. We at MBYC take our responsibility to monitor and manage the water environment very seriously, to be good stewards of our environment, respectful toward our natural resources, and abide by State and Federal Laws and DOE processes and requirements. (Commenter #596, Meydenbauer Yacht Club)

Response: Comments noted.

202. We are specifically concerned with the condition limiting a percent of treatment per lot under the control section of this permit. The majority of our lots are 14 to 20 feet wide. There are no herbicide technologies available that allow of the partial treatment of areas this small. This condition is not workable and needs to be revised back to previous permit conditions that focus on protecting a percentage of the total plant areas present in the lake. (Commenter #34, Newport Yacht Basin Association)

Response: Please see response to Comment #26.

203. We keep our boat, a twin-engine Tollycraft 37 powerboat, on Dock 1 at Seattle Yacht Club. In December, 2004, we took our boat on the Special Peoples' Cruise, loaded with three guests plus a chaperone, my wife and a friend to take care of the guests and set out food, an experienced skipper as navigator/extra eyes, and myself as skipper. All went well until partway into the event, when the generator, which powered the Christmas decoration lights and the electric heaters in the passenger cabin, shut down without warning.

We brought our mechanic to the dock the following week, and he discovered that the generator cooling system was plugged with milfoil. Lacking cooling water, the engine temperature went up. Fortunately, the generator's shutdown system stopped the generator before serious engine damage could take place. Absent the shutdown system, we could have lost the generator, a \$5000-6000 expense. We still had the anxiety of equipment failure with three developmentally disabled passengers aboard, and the cost of a mechanic's visit to the boat.

Last summer, I noticed a persistent vibration when the boat was running above idle speed. When the boat was hauled out (for other work), we discovered milfoil wrapped around the hub of the port engine propeller, and around the egg-shaped protective zinc on the port propeller shaft. In addition to the annoyance, vibration shortens the life of the entire drive system, and causes more fuel to be burned. (Commenter #626, Robert Hale)

Response: Comment noted.

204. I am astonished that with safe chemicals for milfoil treatment, it has not been possible to remove the milfoil from Portage Bay. The milfoil is damaging boats – my boat! – creating safety concerns, and killing fish life. The milfoil is a non-native invasive plant. Its presence should not be tolerated. (Commenter #626, Robert Hale)

Response: Unfortunately milfoil is found throughout the Lake Sammamish, Washington, Union/Portage Bay system. With such an extensive population of this noxious weed in the system, eradication is not possible. Controlling milfoil in Portage Bay will not stop it from reinvading from other parts of the system by water flow or by being transported by boats.

205. I am a 72 year old boating citizen of Seattle and the milfoil situation in Portage Bay is defiantly at its worst ever. I have owned boats ever since I was 18 and currently have a 40 ft sailboat which I am enjoying in my retirement years. Except, the milfoil is such a problem that my raw water cooling system gets clogged-up and my engine overheats. Even though I do sail a lot, it is necessary to run the engine some to get to Lake Washington or Puget Sound.

The milfoil was not a problem when Portage Bay was not as clear as it is today. We can boast of the cleanest water ever but it makes it easy for the milfoil to take over. The next thing that will happen in Portage Bay is for it to turn into a stinking and fouled bog, which is the first step to becoming a mud flat and un navigable. Seattle does not need for that to happen. The herbicides being suggested as the cure makes a lot of sense except to a few of the houseboat dwellers on Portage Bay that illegally use the Bay waters to water their flowers. They are afraid the chemicals will kill their flowers. All they need to do is stop using the Bay waters totally (and be legal) or at least stop for two weeks when the chemicals are first placed in the water.

Anyway, be a hero to our city and allow the use of the herbicides so that one of our great resources doesn't turn into a bog. (Commenter #628, Dwight Shaw)

Response: Comment noted.

206. I have boated in the Seattle and surrounding area for forty years and have moored in Portage Bay at the Seattle Yacht Club for over thirty years. I have observed the increase in the presence of milfoil and other noxious weeds to the point that it has become a safety problem to boaters and swimmers. I personally have had my underwater running gear fouled to the point of affecting safe handling and steerage of the boat. Intake valves have been fouled resulting in engine overheating and potentially serious problems.

I moor where I can observe people anchoring their boats between the 520 freeway and the Seattle Yacht Club to swim from their boats. The depth and density of the milfoil growth is clearly a hazard to their swimming and enjoyment of not only the Portage Bay waters, but also significant water areas of Lake Washington.

The problem is only becoming worse.

It is my understanding that the United States Department of Ecology has approved certain herbicides for effective weed control as safe. Inasmuch as these waters are equally part of the Navigable Waters of the United States, local government not only is precluded from policies that unreasonably restrict navigation in such waters, it has a responsibility to promote navigational rights, as well as be cognizant of significant safety issues. (Commenter #630, Richard H. Johnson)

Response: Please see response to Comment #29.

207. I'm afraid that unless important modifications are made to the draft, this new general permit will give applicators unprecedented opportunity to apply herbicides to our communal waters free of the regulation and oversight that are hallmarks of responsible stewardship of our state's water resources.

I am particularly concerned about these portions of the permit:

Under the existing general permit, applicators could not apply herbicides to the same area for a third year without holding a community meeting involving neighbors who are affected by the decision to chemically treat waters they share. An integrated plan for weed control considering mechanical as well as chemical means of control also had to be developed and submitted to Ecology for evaluation and revision. That set up a dialog between the applicant for the permit and the Dept. of Ecology from which important modifications emerged.

The new draft general permit contains NO requirement for public input by means of a community meeting - and NO development of an integrated plan. (Commenter #633, Diana Foreman)

Response: Please see responses to Comments #5, 6, 7, 8, 9, 11, 13, 14, and 70.

208. To make matters worse, instead of granting specific permits requested by herbicide applicators for only one year, as has been the case, the draft general permit allows the issuance of specific permits good for FIVE years without review and with only minor monitoring.

During the five years an applicator holds a specific permit to apply herbicide to a given location, the only monitoring that will be done is for dissolved oxygen and that, by the permittee. There is NO provision for monitoring the persistence of the herbicide in the environment, of the distribution of the herbicide once administered, or of its impact on all aquatic species, and no provision for monitoring by the Department of Ecology or other independent agency.

My concerns about the draft permit come out of five years of effort to hold meaningful conversations with our neighboring yacht clubs about controlling aquatic weeds in Portage Bay here in Seattle. Had it not been for the requirement to hold a public meeting and develop an IAVMP, and the requirement to apply for a permit each year herbicides are to be used, houseboaters like myself would still be helpless to affect the unilateral decision-making with regard to water we share that was going on a few hundred yards south and east of us. (Commenter #633, Diana Foreman)

Response: Please see response to Comment #33.

209. Because the clubs were required to talk with their neighbors about herbicide applications planned for the summer of 2005, we undertook conversations with their representatives about options for mechanical control and forwarded information that we hoped would encourage them to adopt at least some mechanical controls. This was especially useful when we all learned that no permits would be granted for chemical weed control in the Lake Washington Ship Canal area. We held a meeting for waterside landowners interested in learning how to rake out their own weeds, and the yacht clubs hired commercial weed mowers to keep their navigation channels open. We all learned along the way as we coped with our common problem, and the public meeting and IAVMP that had been required helped the clubs decide how to proceed.

No pesticides were allowed in city waters prior to 2001 when the city handed control of water resources over to the state, and herbicides were allowed in city waters. Prior to that time floating mats of milfoil appeared and then sank out of sight with the seasons, but since the first herbicide application in 2002, a more aggressive noxious weed, Brazilian elodea, has enthusiastically filled the niche left by the diminished milfoil community, and we are confronted yearly with another "need" to control the weeds. The least expensive quick fix remains chemical, a means of control about to be made more readily available by this draft general permit.

I am very distressed to think that, under this new permit, we neighbors who are focused on the long-term health and stewardship of the bay will be even more powerless than before. (Commenter #633, Diana Foreman)

Response: Comment noted.

210. I am writing to comment on the above revised permit both as a concerned citizen and a resident of Portage Bay who knows intimately the problems associated with invasive noxious water weeds. Over more than a decade of watching weed growth develop in the Ship Canal, Portage Bay, and the houseboat community on Lake Union, I have watched a variety of control methods used and their results. Additionally, I was part of a group which in 2005 received a grant to purchase and test a variety of cutting and mowing equipment. Our work resulted in substantial success, controlling weed growth throughout the season. (Commenter #686, Betty Swift)

Response: Comment noted.

211. Based on this experience and my past work with commercial pesticide contractors, I have serious concerns about this new proposed permit and its implications for the health and welfare of Lake Washington/Ship Canal/Lake Union/Portage Bay waters. As everyone who knows Washington State lake issues attests, the above connected waterway does not share the characteristics of small, discrete lakes and should be treated more like the salmon-bearing waterway that it is. (Commenter #686, Betty Swift)

Response: Ecology agrees that the Lake Washington/Ship Canal/Lake Union/Portage Bay system is unique and has characteristics that are different from most lakes included under this permit. Ecology is proposing to include specific language for treatments within this system of lakes.

212. This proposed permit removes any need to consider alternatives to chemical treatments of public waters, even though several successful alternatives exist and more are being developed every year. One cannot help but wonder why only one treatment would be favored over all others and if the permit writing process had been unduly influenced by outside interests. (Commenter #686, Betty Swift)

Response: Please see responses to Comments # 4 and 6.

213. A pesticide permit must include periodic monitoring for distribution and persistence of the treatment material. It is not sufficient to monitor only for dissolved oxygen, which is only one component of the treatment effects. (Commenter #686, Betty Swift)

Response: Ecology obtains information on the distribution and persistence of the aquatic herbicides allowed for use under this permit through our Noxious Weed Grants Program. Additionally, Ecology has funded monitoring projects to obtain data. Ecology had conducted in-depth risk analyses and environmental impact statements on each product prior to allowing its use. We will continue to gather data through these means.

214. The proposed permit does away with all but a minimum of safety related community notification of impending treatments, thereby removing any decision making participation by the public. Under this permit, the public is effectively locked out of any influence over the

health of public waters for the five year duration of each permit. (Commenter #686, Betty Swift)

Response: Please see response to Comment #32.

215. As mentioned above, the permit is proposed to extend for five years, which is far too long to effectively address adverse results of the treatments or other changing conditions. The permit would simply open the door to a given set of chemical applications and disallow modification or change for half a decade. (Commenter #686, Betty Swift)

Response: Ecology believes that if herbicides and algaecides are applied according to their EPA label, **and** the applicator complies with the terms and conditions of this general permit, there should be no long-term impacts to aquatic life.

216. In short, I find this permit has extremely serious drawbacks. It truly would appear to have been written by one commercial segment of the noxious weed treatment business and been designed to insure that the public be deprived of any voice in the welfare of its own waters. (Commenter #686, Betty Swift)

Response: Ecology drafted this permit with advice from a External Advisory Committee composed of members from private industry, local and state governments, Tribes, the academic and consulting community, and environmental groups. A review of the comment letters received by Ecology shows that the public has disparate views of the applicability of chemical treatment. Ecology is required under state law to make a water quality permit available for the treatment of noxious weeds with aquatic herbicides.

217. Since 2001 we have been involved in an effort to minimize the amount of toxic chemicals that are used in Portage Bay for the control of noxious weeds. As co-founders of the Portage Bay Coalition for Clean Water, we are closely involved and well informed of the issues surrounding the use of chemicals for weed control and the other options such as manual pulling, mowing, barriers.

For your information, last year mowing was used to successfully control the Brazilian Elodea and the Eurasian Milfoil at the foot of Shelby Street. This is between docks and around boat slips. A special, small mower was used by Dan Dolson's company Aquatic Weed Control, and there was need for only one mowing this past summer. My husband and I live on this waterway, and have been quite concerned in the past when the Seattle Yacht Club and the Queen City Yacht Club have used chemicals to attempt to control the weeds; there is no evidence that the chemicals are any better than the manual methods. We have seen evidence of damaged wildlife due to the chemical applications (i.e. a blinded muskrat; death/disappearance of nesting pied-billed grebes; dead sticklebacks). Though these chemicals are "legal" under EPA rulings; it does not mean that they are harmless to our environment. (Commenter #678, Molly and John Bailey)

Response: If you have specific information related to a direct chemical application and environmental damage, please report that to Ecology at the time of the treatment.

The chemicals allowed for use under this permit have undergone review by EPA prior to registration. Additionally, WSDA and Ecology have reviewed the data, prepared risk assessments, and completed environmental impact statements that mitigate any potential impacts. Washington does not automatically approve all federally registered products for use in Washington State, due to our concern for salmon and other aquatic organisms.

218. In the Seattle P.I. of July 14, 2005, Lisa Stiffler's article "Herbicide Use in Waterways to be Limited". Due to an agreement between Washington Toxics Coalition and the state Department of Ecology, there should be "better monitoring and much better assurance that the applications will protect Puget Sound". It does not appear that the new permit created by D.O.E. will do anything of the sort. (Commenter #678, Molly and John Bailey)

Response: Comment noted.

219. Applicants never have to evaluate non-chemical methods as alternatives to chemical controls. (Commenter #678, Molly and John Bailey)

Response: Please see responses to Comments #5, 6, 7, 8, 11, and 13.

220. Five years of chemical applications without ANY review by the public or Ecology Department. (Commenter #678, Molly and John Bailey)

Response: Please see response to Comment #33.

221. Portage Bay, which is part of the Lake Washington Ship Canal is not a small enclosed lake. There is current from Lake Washington that ends up in Puget Sound! This area should not be treated under the same regulations as enclosed lakes of the state! A separate permitting system should be in place for the Lake Washington, the Lake Washington Ship Canal, Lake Union (including Portage Bay). (Commenter #678, Molly and John Bailey)

Response: Please see response to Comment #34.

222. Portage Bay is used extensively by the public. No private entity such as the Yacht Clubs should be able to use toxic chemicals for weed control when there are non-chemical methods available. THE PUBLIC SHOULD HAVE THE RIGHT TO COMMENT AND APPEAL ON ALL ASPECTS OF AN APPLICATION UNDER THE PERMIT. (Commenter #678, Molly and John Bailey)

Response: Please see responses to Comments #5, 6, 7, 8, 9, 11, 13, 14, and 70.

223. The new permit should include close monitoring for pesticide persistence and distribution, AND IMPACTS TO ALL WILDLIFE in and around the affected water. (Commenter #678, Molly and John Bailey)

Response: Please see response to Comment #213.

224. It seems pretentious to pretend that Washington State is "green" when chemical applicators continue to apply toxic methods in spite of the availability of non-toxic options. The Governor's Puget Sound Action Team should be ashamed to allow this to continue. (Commenter #678, Molly and John Bailey)

Response: The Puget Sound Action Team does not have the authority to regulate aquatic herbicide use in Washington.

225. I am greatly concerned that unless important modifications are made to the draft, this new general permit will give applicators unprecedented opportunity to apply herbicides to our communal waters free of the regulation and oversight that are key to protecting our natural resources and the plants and animals that depend upon them. (Commenter #677, Penelope Lewis)

Response: Please see responses to Comments #4 and 6.

226. Under the existing general permit, applicators could not apply herbicides to the same area for a third year without holding a community meeting involving neighbors who are affected by the decision to chemically treat waters they share. An integrated plan for weed control considering mechanical as well as chemical means of control also had to be developed and submitted to Ecology for evaluation and revision. This requirement resulted in an important dialog between the applicant for the permit and the communities directly affected by the applications.

The new draft general permit contains NO requirement for public input by means of a community meeting - and NO development of an integrated plan. Making matters even worse, instead of granting specific permits requested by herbicide applicators for only one year, as has been the case, the draft general permit allows the issuance of specific permits good for FIVE years without review and with only minor monitoring. (Commenter #677, Penelope Lewis)

Response: Please see responses to Comments #5, 6, 7, 8, 9, 11, 13, 14, and 70.

227. During the five years an applicator holds a specific permit to apply herbicide to a given location, the only monitoring that will be done is for dissolved oxygen and that, by the permittee. There is NO provision for monitoring the persistence of the herbicide in the environment, of the distribution of the herbicide once administered, or of its impact on all aquatic species, and no provision for monitoring by the Department of Ecology or other independent agency. (Commenter #677, Penelope Lewis)

Response: Please see response to Comment #213.

228. I live on a floating home on Portage Bay in Seattle. My concerns about the draft permit come out of five years of efforts by a few of us to hold meaningful conversations with our

neighboring yacht clubs about controlling aquatic weeds in our surrounding waters. Had it not been for the requirement to hold a public meeting and develop an IAVMP, and the requirement to apply for a permit each year herbicides are to be used, house boaters like myself would still be helpless to affect the unilateral decision-making with regard to water we share that was going on a few hundred yards south and east of us.

Because the clubs were required to talk with their neighbors about herbicide applications planned for the summer of 2005, we undertook conversations with their representatives about options for mechanical control and forwarded information that we hoped would encourage them to adopt at least some mechanical controls. This was especially useful when we all learned that no permits would be granted for chemical weed control in the Lake Washington Ship Canal area. We held a meeting for waterside landowners interested in learning how to rake out their own weeds, and the yacht clubs hired commercial weed mowers to keep their navigation channels open. We all learned along the way as we coped with our common problem, and the public meeting and IAVMP that had been required helped the clubs decide how to proceed.

No pesticides were allowed in city waters prior to 2001 when the city handed control of water resources over to the state, and herbicides were allowed in city waters. Prior to that time floating mats of milfoil appeared and then sank out of sight with the seasons, but since the first herbicide application in 2002, a more aggressive noxious weed, Brazilian elodea, has enthusiastically filled the niche left by the diminished milfoil community, and we are confronted yearly with another "need" to control the weeds. The least expensive quick fix remains chemical, a means of control about to be made more readily available by this draft general permit, but which will cause damage to all water foliage—good, nuisance and noxious—as well as the wildlife that depend upon clean water and food to survive. (Commenter #677, Penelope Lewis)

Response: Please see responses to Comments #5, 6, 7, 8, 9, 11, 13, 14, and 70.

229. The draft permit is also focused on smaller, contained bodies of water and does not address at all the needs of larger Lake Washington and the ship canal, through which endangered salmon travel. (Commenter #677, Penelope Lewis)

Response: Please see response to Comment #34.

230. It appears that the applicators have won big time at this point and that the environment will suffer as a result—who, if not the Department of Ecology, will protect the precious resources that we still have? (Commenter #677, Penelope Lewis)

Response: Comment noted.

231. As citizens who have lived on Lake Union for almost 20 years, we are distressed by the aquatics permit under consideration for dealing with aquatic weeds and algae. While we understand the frustrations of dealing with the problem, we feel strongly that the ideal approach is an integrated plan which considers all means available and addresses and

evaluates the least invasive, and least toxic, methods of control first, before moving to a "need" to apply herbicides. (Commenter #674, Kay and Dick Olsen)

Response: Please see the responses to Comments #4, 6, and 18.

232. We understand that the new draft general permit contains NO requirement for public input by means of a community meeting - and NO development of an integrated plan. We also understand that instead of granting specific permits requested by herbicide applicators for only one year, as has been the case, the draft general permit allows the issuance of specific permits good for FIVE years without review and with only minor monitoring. And that there is NO provision for monitoring the persistence of the herbicide in the environment, of the distribution of the herbicide once administered, or of its impact on all aquatic species. (Commenter #674, Kay and Dick Olsen)

Response: Please see the responses to Comments #5, 6, 7, 8, 9, 11, 13, 14, 33, 34, and 70.

233. The impact on the lake life is of particular concern to us- the houseboaters in my community are so very careful of the products we use when gardening, cleaning and maintaining our homes so as not to harm the life balance. And it is only in recent years that we have witnessed an increase in the wildlife of the area. We would hate to see the evolution reverse, because someone is looking for the easiest or quickest way to address the problem of noxious plant life and algae. (Commenter #674, Kay and Dick Olsen)

Response: Please see response to Comment #35.

234. Please reconsider the drafted plan and develop one that allows for 1) the least toxic and least invasive approach, 2) shorter permit periods 3) opportunities for community participation in the decision-making process and 4) public comment and appeal on all aspects of an application for coverage under the permit. (Commenter #674, Kay and Dick Olsen)

Response: Please see the response to Comment #18.

235. As a resident for 67 years and a boat owner for more than 50 years, I am concerned that milfoil will curtail boating. When I leave Meydenbauer Bay, the milfoil gets wound around my propellers and gets sucked into the engine cooling system. If it is allowed to get worse, this milfoil will prevent boats from using Meydenbauer Bay as well as other parts of Lake Washington.

The State should authorize application of herbicides to curtail growth or kill this evasive weed, and recommend a means for monitoring application to be sure the Ecology guidelines you define are followed. (sic) (Commenter #669, Roger Orth)

Response: Comment noted.

236. I would like to cast my votes for herbicides to control milfoil. I have seen firsthand the results, and there is no other process that has proven acceptable results. Even with the mowing of the milfoil, damage is being reported to boat engine water pumps with impeller damage from milfoil. (Commenter #683, Richard Benson)

Response: Comment noted.

237. Two summers ago some success was achieved by using chemical to kill milfoil in Meydenbauer Bay.

Last summer mowing and harvesting was used. The result was at best temporary. When one prunes most plants, they usually come back more vigorously than before. Such was the case with the milfoil.

I urge some chemical treatment be allowed to kill the milfoil, lest over time, the bay will be reclaimed as land. (Commenter #688, Frederick Beck)

Response: Comment noted.

We must do something with the Milfoil in Portage Bay. This pass summer my grandsons small sailboats rudder got tangled up in the Milfoil near the Seattle Yacht Club docks. While he was trying to clear the rudder he capsized his boat. Capsizing his boat should not be a problem except when he himself got tangled in the slimy Milfoil and couldn't swim out of it. Thank God there was another boat that came to his rescue. This is a very dangerous condition and I am begging you to do something before we have another accident.

Mowing the Milfoil is only a way to spread it around and spread seeds around Portage Bay. Before long Our Lakes and navigable waters will be Clogged with Milfoil as it has done in the Midwestern States We must use Herbicides to control this dangerous non native aggressive killer weed now.

I know that Federal and State Agencies have approved Herbicides treatment to control Brazilian Elodailiang (sic) and Milfoil without harm to fish, wildlife, or humans.

I ask of you to support the permit to remove this dangerous Milfoil before We lose an innocent child.

May I also remind you that Milfoil is not a native plant. (Commenter #690, Everett Johnson)

Response: Comments noted.

238. The purpose of this letter is to provide our perspective about the weed problem in Meydenbauer Bay in Bellevue, WA.

My wife and I are residents of Bellevue and our home of eighteen years is located near the water on the Southeast side of Meydenbauer Bay. We have easement access to the dock, owned by our neighbor down in front of us. For quite a few years we have kept our boat at the dock. At the moment we are in-between boats, but our experience is certainly relevant.

At certain times of each year, we are extremely nervous about starting the engines on the boat, or operating the dinghy motor, because of the enormous weed growth. Being in the shallower end of the bay, (10-20 feet deep), we are vulnerable to the weeds growing from the bottom. At times, these weeds form such a dense growth, it looks like our boat is floating in a sea of weeds. The floating bed of weeds is all around and behind the boat. At times, the weeds extend out into the middle of the bay behind our boat. It's dangerous to start the engines as the weeds can immediately be sucked into the engine inlet strainers underneath the boat as well as become wrapped around the propeller shafts and cause damage to the shaft bearings. In addition, the weeds appear to be a safety hazard, in that someone could get caught in the weeds and drown if they fell into the water.

Attempts have been made many times to mow or harvest the weeds in the bay, but it appears these efforts just make things worse. We need a robust solution to this weed dilemma. Your effort to solve this problem will be very much appreciated. (Commenter #691, B. Duane Jackson)

Response: This permit is one solution to the problems of excessive plant growth in lakes. Within its resources, Ecology also provides technical assistance and education to lake groups desiring other forms of control.

239. This permit is geared for lakes where there is one clear governing body reviewing and making decisions about vegetation management. For the large lake systems of Lake Washington, Lake Union, and Lake Sammamish, there are multiple municipalities, agencies, homeowners, businesses, and individuals that all have a stake in vegetation management. In the past, their vegetation management projects and pesticide applications have not been coordinated, and Ecology has not adequately considered the cumulative impacts of all of these treatments. Granting individual permit coverage extensions to each of these groups, under the previous general noxious weed permit, has allowed hundreds of applications of herbicides to these waters without slowing the spread of noxious weeds.

Because of these special considerations, we urge Ecology to include special planning requirements for these lakes in the new permit. Agencies, individuals, and organizations that wish to apply pesticides to these lakes should be required to coordinate planning before they are able to obtain coverage under the permit. This requirement will have two benefits. One, with greater coordination, there is greater likelihood that actions taken will be effective in slowing the spread of noxious weeds. Two, Ecology will be able to adequately consider the impacts when it knows the totality of the applications planned before it grants coverage.

Under the draft permit, the problematic situation that was occurring under the former permit is likely to be continued, in which individual land-owners, typically on large lakes, choose to treat waters adjacent to their property and neighbors are not aware until the permit coverage

is already granted and the application planned. In other lakes, usually smaller lakes, homeowners associations or lake management groups are more likely to represent many of the lakefront properties and more likely to include community input in the decisions about vegetation management. For the large lakes, this has not happened and will not happen if the current permit is approved.

The purpose of this permit is to comply with state law that is intended to assist with the control of noxious weed in Washington waterways. This permit does not achieve the goal of managing noxious weeds in large lakes and systems such as Lake Washington, Lake Union, and Lake Sammamish, and does not protect these lake ecosystems or the people using these waters. (Commenter #696, Washington Toxics Coalition)

Response: Please refer to the response to Comment #34.

240. The draft permit's allowance for coverage of individuals for five years is contrary to state rules and unwise. The previous permits required coverage to be applied for and granted each year.

According to state rules, short-term modifications of the water quality standards may only be allowed for one year, unless certain conditions are met.

WAC 173-201A-110(1)(c) limits short-term modifications to one year, unless the pesticide application

”is part of an ongoing or long-term operation and maintenance plan, integrated pest or noxious weed management plan, water body or watershed management plan, or restoration plan. Such a plan must be developed through a public involvement process consistent with the Administrative Procedure Act and be in compliance with SEPA, in which case that standards may be modified for the duration of the plan, or for five years, whichever is less.”

Thus, state rules are very clear that the short-term modifications may not be issued for more than a year without an appropriate plan, which in this case would be an IAVMP developed through a public process consistent with the Administrative Procedure Act and in compliance with SEPA, i.e., for which an EIS is prepared. The permit as drafted, however, does not include provisions to require IAVMP. Unless it is modified, permit coverage must be limited to one year. (Commenter #696, Washington Toxics Coalition)

Response: As the commenter notes, WAC 173-201A-110 generally limits short-term modifications to one year unless the activity that is the subject of the short-term modification is subject to some type of planning process. The regulation authorizes multiple individual short-term modifications that are limited to hours or days so long as the short-term modifications in total do not exceed one year. As currently drafted, the permit authorizes a series of short-term modifications that exceed one year over the life of the permit. Ecology will add language to the permit to clarify that the short-term modification of water quality standards can only last for hours or days for a specific pesticide application and cannot exceed one year in the event that a site is treated

multiple times over the life of the permit.

241. How does the permit comply with the Surface Water Quality Standards regulation on short-term modification given its limitations on coverage periods? (Commenter #696, Washington Toxics Coalition)

Response: Please see response to comment #240.

242. Regardless of whether an IAVMP is required, however, we argue that a one-year coverage period allows for much better management by Ecology. In the past, this arrangement has ensured that the state has had at least basic current information about the status of lakes, vegetation, community concern, and impacts of previous applications before allowing applications to continue for another season. An annual requirement to review each applicant seems to be the best way to make sure that updated information about the status of the lake is being passed onto the department. (Commenter #696, Washington Toxics Coalition)

Response: Ecology requires weekly and annual reporting under this permit. The required reporting provides information on which lakes are being treated, how much product is being applied, what types of plants are targeted, etc. Coverage does not have to be issued on an annual basis for the agency to obtain this type of information. Furthermore, it can be considered burdensome to noxious weed control activities to require a SEPA checklist, NOI submittal, and public noticing in newspapers each year. The intent of a general permit is to allow entities to obtain coverage once, and retain that coverage for up to five years. Ecology uses general permits when its resources are limited and a class of activities can be relatively easily regulated by a single permit.

243. The new Long Lake Management District took effect on January 1, 2006. Long Lake has a long history of active, effective citizen stewardship of our water quality and lake environment. Five separate five-year LMD's have been approved/renewed by Long Lake residents. The LLMD and its integrated approach to control and noxious weed eradication have been publicly recognized for best practices by WALPA and the Department of Ecology.

The LLMD has several concerns with the Aquatic Plant and Algae Management General Permit as drafted. Our primary concern is around the drastic reduction in parameters for allowable treatment areas of the littoral zones on individual lots from 75% to 40%. As a practical matter, contiguous lots seeking treatment permits for controlling floating-leaved and emergent plants would result in creation of an unworkable "checkerboard" of treatment zones. Further, we are concerned by comments made by DOE staff in the Centralia meeting admitting the difficulty of this scenario, but also stating that while it "won't necessarily affect coverage, it could impact compliance," clearly threatening penalties to applicators for attempting to work within such suspect treatment parameters. This seems to suggest that DOE may well issue permits for such "checkerboards" of treatment areas, realizing it is practically impossible for an applicator to successfully comply. This would have a chilling effect on licensed applicators seeking approved treatment permits, and, we believe, have the adverse effect of motivating frustrated homeowners to attempt their own non-approved chemical treatment methods instead.

We were further concerned that when asked for data of “the science” supporting the decision to reduce control area to 40%, DOE staff provided nothing of substance. Instead the number was characterized as a “best guess” based on research that is “all over the board” and an assumption that “abuse” of the allowable treatment parameters would occur. This is not satisfactory justification, in our opinion, for such a drastic reduction in allowable treatment area, especially given that no examples of adverse impact to water bodies from the referenced past “abuses” was put forward by DOE staff in attendance when asked to elaborate. Additionally, we were dismayed by the public disagreement over the facts of the permit and various background issues voiced by different DOE staff members who attended and facilitated the hearing and workshop. This frankly undermined our confidence in the proceedings and the permit. (Commenter #700, Long Lake Management District)

Response: Please see response to Comment #77.

244. While the LLMD applauds some very positive, streamlining measure in the proposed permit and process, we are also extremely concerned about the overall tone and philosophy behind it. It is our feeling that this permit is written in such a way as to be unduly technically restrictive and obstructionist, rather than clearly spelling out a good faith permit process designed to assist citizens and organizations in reasonable cooperative plant control efforts that will safeguard natural, recreational and aesthetic values of affected water bodies. (Commenter #700, Long Lake Management District)

Response: The final permit will be revised and streamlined within the bounds of Ecology’s legal requirements.

245. The Native Plant Control Category (A 2. in permit) would allow for incremental impacts to lake-fringe wetlands by allowing the removal of up to 40% of the vegetation (that is not noxious) in the littoral zone of each lot. These actions would be allowed under this permit by each property owner independently. There is the potential therefore, that 40% of all vegetated wetlands in each lake could be destroyed by herbicides.

We are concerned that such an indiscriminate removal of vegetation poses a high risk to public health and to the beneficial uses that the wetlands provide, and we would like to suggest that the removal of such vegetation be qualified by further conditions. (Commenter #702, Department of Ecology, Shorelands and Environmental Assistance Program)

Response: Please see response to Comment #77.

246. One potential consequence of removing macrophytes is a shift in the ecosystem of the lake from an ecosystem dominated by macrophytes to one dominated by blue-green algae. Recent studies indicate that “clear-water” states are maintained through direct and indirect effects of submerged vegetation (Weisner et al. 1997). Such a shift from an ecosystem dominated by macrophytes to one dominated by blue-green algae has the potential of creating a significant hazard to human health because many blue-green algae are extremely toxic. Blooms of some Cyanobacteria produce toxins during growth and decay that will kill aquatic animals.

Poisoning of livestock, pets and humans has been widely documented. Cyanotoxins include hepatotoxins (liver), neurotoxins, cytotoxins and dermatoxins (Downing, et al. 2001). The potential shift in ecosystems needs to be addressed in the permit because the threat is real. To our knowledge there are several lakes in the region that have already undergone this shift (Black Lake in Olympia, Lake Lawrence near Yelm, Green Lake in Seattle, and Lake Steilacoom and American Lake in Lakewood).

Control of macrophytes should be considered an issue of risk. What is the risk that a lake will change states when macrophytes are removed? Removal should be limited when the risk is high. Removal of a certain amount (say the 40%), however, could be allowed when the risk is low.

To minimize the risk of a shift to a blue-green dominated ecosystem we recommend that the permit allow removal of up to 40% of macrophytic vegetation in the littoral zone only when the measured water quality parameters for Nitrogen and Phosphorous are below the following thresholds.

- Average value of total N in surface water between March and September is below 1 mg/l.
- Average value of total P in surface water between March and September is below 70 micrograms/l.
- Average should be of at least 7 measurements (taken monthly) in the middle of the lake with three replicates.

These criteria are based on a review of the data from 99 lakes in temperate areas around the world (Downing et al. 2001). The study found that the risk of blue-green algae blooms increases as the concentrations of phosphorus or nitrogen in the lake increases, and there are definite thresholds that increase the risk significantly. Specifically, the statistical analysis of the data found that the average summer concentrations of P above 70 micrograms/l show an 80% probability of phytoplankton dominated by blue-greens. The risk between 30-70 micrograms is about 40%. The similar value for total nitrogen where the risk increases significantly is 1 milligram per liter.

From this we can conclude that lakes in which N or P concentrations are above the threshold but have not yet shifted over to blue-green algae are maintained that way to some degree by the presence of the macrophytes. Removing large areas of macrophytes in lakes with high N or P concentration will increase the risk of a shift in states because their probable state is dominance by blue-greens. (Commenter #702, Department of Ecology, Shorelands and Environmental Assistance Program)

Response: It is not financially feasible to require small lake associations (or even large lake associations) to fund this type of comprehensive data collection. Ecology agrees that this type of information would be an extremely useful tool for evaluating the trophic status of Washington lakes, but that it is unrealistic to expect this type of evaluation under a general permit.

247. There is no provision by which lake-fringe wetlands that are characterized as having high levels of functions will be protected. Lake fringe wetlands can improve water quality, protect shorelines from erosion, and provide habitat for many different species. The draft permit does not provide any way to protect these lake-fringe wetlands from the effects associated with herbicide activities allowed under this permit.

To minimize the risk to wetlands that provide important functions we recommend that lake-fringe wetlands scoring more than 29 points for habitat, or more than 17 points for water quality improvement, or 12 points for reducing shoreline erosion, in the Wetland Rating System for western or eastern Washington be excluded in the general condition permitting up to 40% removal of vegetation. Lake-fringe wetlands with these higher levels of functioning should be subject to individual scrutiny before allowing removal. The boundary of the lake-fringe wetland should be placed at the ordinary high water mark of the lake and extend to the outer edge of submerged or floating macrophytes in performing this rating.

One approach that might minimize uncertainty for property owners would be to identify in advance wetlands with high levels of function. Using this strategy the highest quality lake fringe wetlands could be identified ahead of time so that permit applicants would not be required to assess the wetlands as part of the permit application.

In the absence of a general inventory for each lake, applicants would have to rate their lake-fringe wetland as part of the permit application. (Commenter #702, Department of Ecology, Shorelands and Environmental Assistance Program)

Response: Ecology is attempting to balance the uses of a water body for habitat with those uses associated with recreation, navigation, and aesthetics. We acknowledge that some of these lake-fringe wetlands may be treated, but have attempted to minimize treatment in order to protect those identified high quality wetlands. It would be difficult for untrained lake applicants to conduct the type of rating system you described.

248. Section B5 includes an exemption for “*Aquatic plant management activities conducted on seasonally dry land surfaces as long as the active ingredient is not biologically available when the water returns.*” This exemption is not feasible as it is impossible for even the experts to predict when the water will return in some seasonal wetlands (i.e. ‘*seasonally dry land surfaces*’). Inclusion of this exemption would place an unrealistic burden on the applicator and it should be expected that this would result in inadvertent exposure of aquatic life to herbicides that are not approved for use in water and are known to have adverse effects on aquatic life. We strongly recommend that herbicide use in any aquatic areas, including all areas of wetlands, be limited to those herbicides approved under FIFRA for use in water. (Commenter #702, Department of Ecology, Shorelands and Environmental Assistance Program)

Response: Ecology agrees that any herbicides used in or around water should be registered by EPA for use in aquatic settings.

249. The City of Maple Valley concurs with all comments submitted by Sally Abella and her staff with the King County Lake Stewardship Program. (Commenter #684, City of Maple Valley)

Response: Comment noted.

250. People for Puget Sound concurs with the Washington Toxics Coalition that a number of permit improvements are needed. (Commenter #693, People for Puget Sound)

Response: Comment noted.

251. We understand our professional lake manager, Aquatechnex, LLC has provided extensive comments on this permit. We support these comments and we incorporate their comments as ours with respect to your view. (Commenter #455, Town of Hunts Point; Ohop Lake; Beaver Lake)

Response: Comment noted.

Specific Comments Section

Specific Comments

In this section, Ecology responded to comments received on specific sections of the Aquatic Plant and Algae Management General Permit. In addition to the changes described in this section, Ecology has made numerous, non-substantive changes to the permit. These changes include:

- Corrections of grammatical errors
- Corrections of punctuation
- Restructuring of sentences from passive to active voice, for clarity
- Changes to the formatting and order of presentation for logic

None of these changes is substantive in nature, but were intended to provide greater clarity and ease of reading.

S1. Permit Coverage

Permit Coverage

1. The following sentence should be deleted from S1:

”This permit also revokes and replaces the Aquatic Noxious Weed Control general permit (WAG-993000) for any submersed or floating aquatic noxious plant activities as specified in S1.A of this permit.” (Commenter #666, Washington State Department of Agriculture, Plant Protection Program)

Response: Ecology agrees with this statement and has removed the sentence above from Section S1 of the permit.

2. S1. This permit “revokes and replaces the Aquatic Noxious Weed Control general permit for any submersed or floating aquatic noxious plant management activities” but then says that it covers shoreline emergent vegetation control later in section S1A. Does this permit revoke the NPDES permit under which the *Spartina* control program is currently operating? Does this permit cover all nuisance and noxious weed control efforts? If so, then that needs to be explicitly stated. (Commenter #629, Washington State Department of Natural Resources, Aquatic Invasive Species Program)

Response: This permit does not revoke or replace the permit issued to WSDA for the control of aquatic noxious weeds. As the result of a lawsuit settlement, the **in-lake** management of noxious weeds has been incorporated into this permit. For the treatment of riparian and submersed noxious weeds in areas other than lakes, coverage will be issued by WSDA under their current permit.

3. S1 – The second sentence in the paragraph should be revised and a third sentence added, as follows: *This permit also revokes and replaces the Aquatic Noxious Weed Control general permit (WAG-993000) for any submersed, floating, or emergent noxious plant management activity as specified in S1.A of this permit. A separate permit from the Washington State*

Department of Agriculture is required for aquatic pesticide applications that target aquatic plants regulated by WSDA under a statewide program. At the time of this permit, these plants include *Spartina*, *Purple Loosestrife*, *knotweed*, and *quarantine list plants*. (Commenter #374, Washington State Department of Transportation)

Response: Please refer to the response to Comment #2.

4. Under S1 Permit Coverage add the statement, *the Aquatic Noxious Weed Control general permit (WAC-993000) applies to emergent vegetation as described in that permit.* Define emergent vegetation in the definitions section of the new permit. **Or** reference WAG-993000 for all noxious and quarantine-listed weed control activities that discharge herbicides **indirectly** into surface waters of the state of Washington. Define what that would mean. My suggestion for that definition would be herbicide applications to emergent vegetation that are not intentionally applied to water bodies.

Or, under S1-B-Activities Excluded From Coverage Under this Permit- exclude emergent noxious or quarantine plant control where herbicide is only indirectly applied. (Commenter #671, Clallam County Noxious Weed Control Board)

Response: Please refer to the response to Comment #2.

5. It is not very clear when this permit applies and when the WSDA pesticide permit applies. Section S1A should be expanded to better define these differences. (Commenter #680, King County DNRP, Parks and Recreation)

Response: Ecology agrees with this statement and has further clarified the language in Section 1 (S1) of the permit. The following sentences have been added to the first paragraph in S1: “This permit also covers the management of any **in-lake*** aquatic noxious or quarantine-list weeds previously covered by the Washington State Department of Agriculture (WSDA). The treatment of emergent noxious or quarantine-list vegetation along lake shorelines can occur under this permit or the Aquatic Noxious Weed Control NPDES General Permit. This permit does not replace the Aquatic Noxious Weed Control NPDES General Permit (WAG-993000) currently issued to WSDA.”

6. Section S1.A of the draft permit indicates that “This general permit covers aquatic plant and algae management activities that discharge chemicals and other aquatic plant and algae control products into the **surface waters of the state** of Washington.” It is our understanding that this new permit, in part, represents a portion of the settlement agreement of the lawsuit brought by People for Puget Sound and Washington Toxics Coalition against the state Department of Agriculture (this is also stated on Page 11 of the Aquatic Plant and Algae Management Fact Sheet that accompanies the draft permit). Our understanding of this settlement is that this new permit would cover **only freshwater** plant species occurring in lakes, with the remainder of aquatic noxious weed control remaining under the WSDA permitting process. If this is the case, this distinction, while specified within the Aquatic Plant and Algae Management Fact Sheet, is not evident within the draft permit itself. As

* Words in bold typeface are defined in Appendix A – Definitions and Acronyms.

permittees will be held to the standards and obligations set out in the actual permit, we believe inclusion of this distinction within in the actual permit to be of critical importance. (Commenter #699, The Nature Conservancy)

Response: Please refer to the response to Comment #5.

7. The permit is said to cover activities that discharge chemicals into **surface waters of the state**. In Appendix B, there is a blank space to list the **lake** name. What exactly is this permit covering . . . all surface waters of the state or just lakes? Please make this point clear. (Commenter #629, Washington State Department of Natural Resources, Aquatic Invasive Species Program)

Response: Please refer to the response to Comment #5.

8. The Aquatic Plant and Algae Management Fact Sheet indicates that the new permit does not apply to “. . . the **majority** of the freshwater emergent species currently covered under the noxious weed permit issued to WSDA.” The draft permit language does not specify which of the freshwater species currently covered under WSDA’s permit are or are not covered under the new permit. We suggest clearly specifying which freshwater species are covered under the new permit, or a statement indicating that, except for the specific species (listing them by name) currently covered under WSDA’s permit, all other freshwater emergent species will be covered under the new permit. (Commenter #699, The Nature Conservancy)

Response: Please refer to the response to Comment #5.

9. S1-A, page 7- Surface waters of the state of Washington means what? I thought this permit was going to be specifically for lakes, but this language could mean marine, river, wetlands, etc. Please clarify like you did in S1-B for water bodies excluded from coverage. (Commenter #698, Washington State Department of Fish and Wildlife)

Response: Please refer to the response to Comment #5.

10. S1-A, page 7- Confusing because the permit specifies submersed and floating, but not emergent noxious weeds, but later mentions “shoreline emergent vegetation” in the first paragraph of A. Does this permit address Spartina as emergent vegetation because neither mentions nor specifically exclude it, which makes me wonder what the permit really covers? Shoreline emergent vegetation encompasses most of aquatic noxious weed control we do, so this is a major issue to WDFW. (Commenter #698, Washington State Department of Fish and Wildlife)

Response: Please refer to the response to Comment #5.

11. Section S1.A: This section indicates that shoreline emergent vegetation control and eradication activities “where chemicals may enter the water” are also included under this permit. What is the distance from shore that treatments can occur and not be subject to this permit? (Commenter #699, The Nature Conservancy)

Response: The use of aquatic herbicides to control riparian emergent noxious or quarantine-list weeds continues to be covered under WSDA's permit. It is up to the applicator to determine when permit coverage is needed for emergent plant projects. If there is a chance the herbicide may enter the water, then permit coverage should be obtained. Ecology has not established buffers because these can change depending on variables such as application methods, wind speed, and other environmental conditions.

Eradication Projects

12. S1. Eradication - Only noxious weeds have been included in this section, but what about genetic hybrids or even native plants that in some situations may behave like invasive noxious weeds and aggressively out-compete other plants in a lake? In Lake Leota (King County), a milfoil identified by DNA as *Myriophyllum verticillatum* has expanded rapidly after recent waterlily control and has completely blanketed the littoral zone around the lake, choking out pondweeds and other native plants and blocking docks and swimming access. It is behaving exactly like Eurasian milfoil, even though the DNA analysis done by a nationally known expert suggests that it is not that species. Other states have recognized that native plants in certain cases can sometimes behave like noxious weeds. Perhaps it is time for Washington to do so as well. (Commenter #5, King County DNRP, Lake Stewardship Program)

Response: Ecology has not determined how potentially invasive **native plants** will be dealt with in the future, but under this permit, they will continue to be conditioned like other native plants.

13. Using extent of the littoral zone to define whether or not an infestation is established or early is not practical. What boundaries are you putting on the littoral zone when you're talking about a coastal shoreline? For example, does an infestation of *Spartina anglica* have to cover over 20 percent of the shoreline of Puget Sound in order to be classified as "established"? Again, it seems as though this permit is tailored towards lakes, where this metric could work reasonably well. (Commenter #629, Washington State Department of Natural Resources, Aquatic Invasive Species Program)

Response: Please refer to the response to Comment #5. The first sentence under S1.A.1.b now reads:

"In-lake eradication projects target either **established infestations** or **early infestations** of submersed, floating, or floating-leaved species."

14. The fact that "some" emergent noxious aquatic plants are covered under this permit is very confusing. What are those particular emergent noxious weeds that are covered and which are not covered? (Commenter #629, Washington State Department of Natural Resources, Aquatic Invasive Species Program)

Response: All emergent noxious weed control activities can continue to be covered under the permit issued to WSDA. However, if a permittee was treating a lake for milfoil, and also wanted to treat yellow flag iris along the shoreline, they could choose to do both activities under this permit or they could obtain coverage for the yellow flag iris treatment under the WSDA permit.

15. On Page 7 under Eradication there is language that indicates this can only be used when the goal is for the noxious weed in the entire lake or the shoreline. State law requires your agency to not burden noxious weed control efforts. In many larger lakes, the State claims ownership of the lake bottom where noxious weed are rooted, yet the State will not take responsibility for managing these infestations. In these cases local homeowners associations are forced to fund these control efforts. We will interpret this statement to include shoreline areas under the management responsibility of these groups where the state will not fund control efforts. In these cases our objective will be to eradicate the noxious weed from that shoreline as is provided for here. (Commenter #3, Aquatechnex)

Response: Ecology maintains that the intent of the noxious weed law is to eradicate a plant from a specific area, or the entire state if possible. In large lakes like Lake Washington, the intent is not to eradicate but control the plants in that specific area. Those are identified as control projects under this permit, and have separate treatment conditions.

16. The second sentence of S1.A.1b draws a distinction between established and early infestations that is unworkable and invalid in the case of emergent quarantine or noxious weeds. This provision should be limited to treatment of submersed weeds in lakes. (Commenter #666, Washington State Department of Agriculture, Plant Protection Program)

Response: Please refer to the response to Comment #13, that provides clarifying language.

17. For clarity, S1.A.1.b on page 8 should indicate whether infestations equal to 20 percent are early or established infestations. (Commenter #374, Washington State Department of Transportation)

Response: Ecology agrees with this statement and has clarified that any infestation of 20 percent or less is an early infestation.

18. Section S1.A.1.a.iii. The newly discovered non-native and potentially invasive plants, is this some sort of list (monitor list?) generated by the WSNWCB or the WSDOE? If so, will there be a season's wait until the newly discovered plant is placed on the list. (Commenter #670, King County Noxious Weed Control Board)

Response: There will not be a new list. Ecology wants to ensure that if new and potentially invasive freshwater species are discovered that are not on the noxious weed list or the quarantine list that this permit will allow these plants to be treated under the eradication category. It will be a judgment call on the part of Ecology's aquatic plant

specialists and members of the State Noxious Weed Control Board when a plant meets these criteria. The goal is to streamline the process of allowing treatment for these plants and there should not be a season's wait.

19. Section S1.A.1.b. What is the protocol for determining this percentile? Is this a subjective measurement? (Commenter #670, King County Noxious Weed Control Board)

Response: The percentile used for early and established in-lake infestations of aquatic noxious weeds comes from the Aquatic Weeds Program at Ecology. It is believed that there are different management tools available for use in lakes where 20 percent or less of the littoral zone is infested, whereas, chemical treatment may be the only option once the infestation covers more than 20 percent of the littoral zone.

20. S1-A-1-b, page 8- I would define littoral zone. Try Googling a definition for it. Also, I have no idea how you would calculate 20% coverage of the littoral zone. Instead of a percentage it may be better to put a line like, "Where it is reasonable to assume the infestation could be eradicated with current methods and budget within 3 years" for early infestations. Or you can take the definition from WDFW's Aquatic Plants and Fish pamphlet, "**Early infestation:** an aquatic noxious weed whose stage of development, life history, or area of coverage make 100 percent control and eradication, as prescribed by RCW 17.10.010 (5) likely to occur." (Commenter #698, Washington State Department of Fish and Wildlife)

Response: Please refer to the response to Comment #19.

Control Projects

21. Need language specifically addressing Class A and Class B-designate weeds. (Commenter #700, Long Lake Management District)

Response: Ecology agrees with the comment and has added language allowing for 100 percent control of Class A weeds and 100 percent control of Class B-designate weeds in the areas where they are designated.

22. Section S1.A.2.a.i.4 & 5. Add 100 % control of Noxious submersed weeds as identified in WAC 16-750 and to quarantine list. 100% control of a designated noxious weed is required by state law (RCW17.10). (Commenter #670, King County Noxious Weed Control Board)

Response: Please refer to the response to Comment #21.

23. The draft permit language in S1.A.2 is too ambiguous and should be made more precise and/or detailed. One example concerns the term 'littoral habitat.' This should be defined as a certain distance from shore, not a certain water depth, since some areas have water shallow enough to contain aquatic vegetation a quarter mile or more from shore. Another potentially confusing factor is the lake level at the time of application. Since Lake Washington is regulated within a two foot range, care should be given to document all decisions and

controls with regard to a fixed reference point and the lake elevation at the time of the decision. (Commenter #667, Muckleshoot Indian Tribe, Fisheries Division)

Response: Ecology considered changing the term littoral habitat to reflect a certain distance from shore rather than a certain depth, but has decided under this general permit to continue to define littoral as the area in which plant growth occurs. Some lakes may have 100 percent littoral habitat.

24. S1.A.2.a.i. Stating that submersed aquatic plant control is limited to native plants and all plants on the noxious weed list and quarantine list is confusing. What does this leave out? What about submersed non-native naturalized plants? What about non-native plants on the monitor list? If it covers ALL submersed plants that aren't covered under the eradication section, why not just say that? (Commenter #672, Washington State Department of Ecology, Environmental Assessment Program)

Response: Ecology agrees and has clarified the section to explain that control covers all noxious and quarantine-list weeds (not targeted for eradication lake wide), and all other submersed plants (which includes native and non-native [but not those plants listed on the noxious weed or quarantine weed lists])

25. S1.A.2.a.i. should allow for 100% control of listed submersed noxious weeds on a lot by lot basis if the control is selective. (Commenter #672, Washington State Department of Ecology, Environmental Assessment Program)

Response: Ecology agrees and has included language allowing 100 percent control of noxious weed or quarantine list weeds if the pesticide used is selective to the targeted plant.

High Use Areas

26. S1.A.2.a.iii. There are many private boat launches on lakes, often for use by individual home owners. State that high use areas are public boat launches and public swim beaches if that is what you mean. (Commenter #672, Washington State Department of Ecology, Environmental Assessment Program)

Response: Ecology agrees with the comment and has added the term “**High Use Areas**” and defined that as “any community boat launches, public boat launches, marinas (both public and private), public or community swim beaches, and canals.

27. S1. Control – Marinas should be specifically added to this list since the phrase “public boat launch areas” does not necessarily include these high-use locations, nor have they been included in the appendix definition of high-use areas. (Commenter #5, King County DNRP, Lake Stewardship Program)

Response: Please refer to the response to Comment #26.

28. Section S1.A.2.a.i.1. 100 percent of plants in **high use areas** except in identified wetlands (see S4) (Commenter #685, Northwest Marina Trade Association)

Response: Ecology agrees and has included language allowing 100 percent treatment of high use areas except in identified wetlands.

29. Section S1.A.2.a.i.1. Add “marinas” after “public boat launch areas”. (Commenter #33, Seattle Yacht Club)

Response: Please refer to the response to Comment #26.

30. Section S1.A.2.a.iii.2. Add “marinas” etc. (Commenter #33, Seattle Yacht Club)

Response: Please refer to the response to Comment #26.

Percentage of Treatment Allowed for Control Projects

31. Section S1.A.2.a.i.2. Where lots are small bordering lakes, the 40% limitation will not provide any relief for that property owner. If the control strategy involves the use of aquatic herbicides dilutions will render the treatment ineffective. Instead, could the set aside be some distance from the beach or end of the dock? Is requiring the fragmentation of aquatic habitat in the best interest of a lake ecosystem? In lakes where there is no shoreline development, use these areas as the set aside. And again, is there a standard practice for measuring a 40% control area that will be defensible. (Commenter #670, King County Noxious Weed Control Board)

Response: Ecology agrees that it will be difficult to maintain a treatment area of 40 percent on a lot by lot basis for control projects. Because of this, Ecology has reevaluated the treatment restrictions for **control projects** and is providing a tiered structure of treatment for whole lake projects. There are also changes for the treatment of individual lots. When the project includes the entire lake community (sponsor is a lake group, lake management district, homeowners association etc.), the amount of littoral zone allowed to be treated is determined by the total surface acreage of the lake as detailed in the table below. It will be up to the lake community to determine which areas of the lake will be treated.

<u>Lake Size (Acres)</u>	<u>Maximum littoral zone treated</u>
0-15	75%
16-50	60%
51-500	50%
over 500	30%

If an individual wishes to have their waterfront lot treated (when operating independently from a community-wide treatment project), they are able to directly apply herbicide or algaecide to no more than 10 feet on either side of a dock, or twenty feet along the shoreline (if they don't have a dock or don't want to treat around the dock). This allows for some drift outside of the direct treatment area.

For whole lake projects, once the treatment areas have been selected (no more than the maximum percentage is allowed based on lake size), those treatment areas cannot change for the life of the permit. Untreated areas must be conserved for fish and wildlife habitat, and water quality purposes.

32. S1.A.2.a.i.2 – 40 percent of plants growing in the littoral zone of lots; How can this be determined?? Most landowners will want all the weeds eliminated from their property or at least have a swimming area and access to docks. The use of chemicals would be very limited and rather impossible to aim at a 40% kill rate. (Commenter #4, Thomas Wimpy)

Response: Please refer to the response to Comment #31.

33. S1.A.2.a.iii.2 – 40 percent of the floating-leaved and emergent plants is allowed on individual lots; Similar to above. Hard to estimate chemical efficiency or if the landowners want just 40% removed. (Commenter #4, Thomas Wimpy)

Response: Please refer to the response to Comment #31.

34. Page 8, S1.A.2.a.i.2. How is the 40 percent determined and why? An explanation of this would be good so one doesn't think it is a subjective number. Additionally, is it possible to treat only 40 percent of the plants? (Commenter #7, Avista Utilities)

Response: Please refer to the response to Comment #31.

35. S1. Control – Can Ecology show that the habitat fragmentation caused by 40% treatment on a lot-by-lot basis does not create the same edge problems for animals and plants in lakes that are found in terrestrial ecosystems with fragmentation caused by logging? Many lots on the shorelines of lakes in the state are very narrow, so that this rule could create extremely patchy aquatic environments with the potential to be detrimental to some animals living in the lake. Is there a best available science document or something similar that lays out the rationale for choosing the 60% retention? (Commenter #5, King County DNRP, Lake Stewardship Program)

Response: Please refer to the response to Comment #31.

36. S1. Control – What is the rationale for being required to leave 60% of a noxious weed on a lot by lot basis if it is determined that it cannot be eradicated? This would also seem to be contrary to state law, which encourages as much control as possible, even if eradication cannot be accomplished. (Commenter #5, King County DNRP, Lake Stewardship Program)

Response: Please refer to the response to Comment #31.

37. S1. Control – Can Ecology show that a chemical treatment following this regulation can be accomplished effectively and precisely on narrow individual lots, some of which are no wider than 50 feet? This could be a prescription for consistent failure as it is currently set out and has the appearance of an attempt to keep chemicals from being used, even though their use has been approved, unless Ecology can show that this requirement is reasonable and can be accomplished consistently. (Commenter #5, King County DNRP, Lake Stewardship Program)

Response: Please refer to the response to Comment #31.

38. S1. Control – Can Ecology adequately determine whether or not 60% of the aquatic vegetation has been retained in front of a property? How will this be measured in an unambiguous and objective fashion? What will the Department's methodology be for doing this? Will the determination be replicable by other individuals or groups? Since plant cover changes considerably over a season, what will be the reference point for the determination?

This seems as if it could be a generator of lawsuits unless applied extremely carefully and in a conservative fashion. (Commenter #5, King County DNRP, Lake Stewardship Program)

Response: Please refer to the response to Comment #31.

39. S1. Control – We suggest that for homeowners or communities who come together to manage their shorelines, retaining a total of 60% of the plants in the littoral zone along the affected shoreline should be the goal instead of trying to make a lot-by-lot requirement work for every lake and in all cases. Thus if homeowners act alone, they would have to retain 60% of the vegetation in front of their property, but if a group of homeowners could come to consensus on how to manage their shoreline as a group, they could act in a more holistic way. This would still keep groups from choosing the center of the lake as the conservancy area if the littoral zone is specified. (Commenter #5, King County DNRP, Lake Stewardship Program)

Response: Comment noted. Please refer to the response to Comment #31.

40. Use 75% factor for control and 25% for preservation. We did not hear at the public meeting any science that would help understand why we would change to the restrictions suggested in the new permit. (Commenter #700, Long Lake Management District)

Response: Comment noted. Please refer to the response to Comment #31.

41. S1-A-2-a-i-2, page 8- By placing control for submersed vegetation at 40% per lot you may have made it impossible for a lake group to do control on submersed vegetation with herbicide techniques by creating an artificial checkerboard. (Commenter #698, Washington State Department of Fish and Wildlife)

Response: Please refer to the response to Comment #31.

42. On Page 7, Control, there is a statement that no more than 40 percent of the plants growing in the littoral zone of a lot can be treated. Most lakefront lots are in the 50-100 foot range. It is not possible to treat 40 percent of those areas with the aquatic herbicides that are available to us. This condition should be modified to protect a reasonable amount of aquatic plant life in the littoral area of the lake as you have done in the past under previous permits. Worded like this, this condition is not reasonable. In addition, when noxious weeds are present, this limitation would be illegal under state law. (Commenter #3, Aquatechnex)

Response: Please refer to the response to Comment #31.

43. Page 8, S1.A.2.a.i.2 - 40% of plants growing in littoral zone of lots. Are you talking about each individual lot or the total of all lots included in the treatment area? ex: 5 lot owners on the east side of Thomas Lake want to control the milfoil in front of their properties and they go in together to hire the contractor. Is only 40% of the milfoil (assuming it has formed a monoculture and is the only thing growing in the area) allowed to be killed on each of the five lots? If the lots each have 100' frontage, how would the applicator effectively treat 40'

of the 100' on each lot? The chemicals move in the water more than that. Maybe this point is irrelevant if in S1.A.2.a.i.4. noxious submersed weeds can be treated at 100%? I don't think this is very clear and it seems to be one of the areas that got us into this mess on Lake Washington, so it should be clear as a bell. Maybe an example or two illustrating Ecology's meaning of the 40% limitation would suffice. (Commenter #2, Stevens County Noxious Weed Control Board)

Response: Please refer to the response to Comment #31.

Lake Washington/Lake Sammamish/Lake Union-Portage Bay

44. S1. Control – When the external advisory committee discussed this section in September, it was suggested that the large multi-jurisdictional lakes such as Lake Washington and Lake Sammamish could be called out separately in order to deal with their specific issues (such as individual homeowners treating chemically on their own) without putting an undue burden on communities of homeowners on small lakes who coordinate their management activities. Why was this strategy not followed? (Commenter #5, King County DNRP, Lake Stewardship Program)

Response: Ecology agrees that the lake system that includes Lake Washington, Lake Sammamish, and Lake Union/Portage Bay requires its own separate conditions for treatment. S1.A.2.v. is added. See the new permit language below:

v. Lake Washington/Lake Sammamish/Lake Union-Portage Bay

1. 100 percent control is allowed in High Use Areas
2. Applicators treating individual lots are allowed to intentionally apply herbicides or algacides to no more than 10 feet of water on either side of a dock or 20 feet in total. The area treated must remain the same for the duration of this permit.
3. If a selective herbicide is used for noxious weed control, herbicides can be intentionally applied to 100% of an individual lot.

Property Lines

45. S1. Control - Often in this state, shoreline property owners do not own the property below the lake water in front of their lots. How can Ecology justify using the terrestrial property lines adjacent to the lake in such cases? This would be easier to understand in the instances where property owners' lot lines extend into the lake. Is Ecology ready to pursue actively a determination of which agency in the State has ownership of many of the lake bottoms, knowing that such ownership could then imply responsibility for taking care of noxious weeds? (Commenter #5, King County DNRP, Lake Stewardship Program)

Response: Ecology does not intend to pursue a determination of who owns the bottom of any given lake. However, there are individuals who wish to treat in front of their houses for the purpose of recreation and aesthetics, and Ecology is attempting to balance this need with the need to preserve habitat for fish and wildlife.

Algae Control

46. S1.A.2.b.ii. There are often cyanobacteria species that could produce toxins present at low levels. May want to set minimum levels. (Commenter #672, Washington State Department of Ecology, Environmental Assessment Program)

Response: Ecology considered setting minimum levels of cyanobacteria (cell counts or toxin levels) to be present in the water body before allowing treatment. However there are not many laboratories that do this type of work in Washington and it was not realistic to expect a rapid turn-around time for these results. People need to treat before a cyanobacteria population reaches bloom status which can happen rapidly.

47. Unclear as to allowable individual lot treatment for algae. S1 defines filamentous algae as treatable under the conditions of the permit, but it appears the permit allows for treatment only on High Use areas such as public swimming beaches. DOE staff at the hearing said individual homeowners may not treat for filamentous algae. (Commenter #700, Long Lake Management District)

Response: Ecology agrees and has clarified the language associated with filamentous algae control. S1.A.2.b.i. now reads “The Permittee may treat filamentous algae on a lake-wide basis so long as the area treated does not exceed the maximum amount of littoral zone allowed for treatment in S1.A.2.a.i.”

Roadside and Ditchbank Activities

48. Pesticide applications conducted by roadside maintenance crews would fall under section S1.A.2.iv. on page 9. This section should be revised to include two bullets. The first should cover state and local agencies as follows: *For roadside maintenance activities conducted by State and Local Transportation Agencies, 100 percent control within the Right of Way is allowed to prevent operational and structural impacts to transportation facilities.* The second bullet can address private homeowners as follows: *Control of 40 percent of roadsides and ditches is allowed on privately owned individual lots.* (Commenter #374, Washington State Department of Transportation)

Response: Ecology agrees with the comments and has added the language above.

Activities Excluded from Permit Coverage

49. S1.B.2 should be modified to include pesticide treatments performed under a valid state or federal experimental use permit, in order to be consistent with provisions later in the draft permit. Also, the meaning of “individual or general NPDES or state permit” is unclear. (Commenter #666, Washington State Department of Agriculture, Plant Protection Program)

Response: Ecology agrees that state experimental use permits should be exempted from this permit and has added language to that effect. Applicators operating under federal

experimental use permits will continue to need coverage under this permit.

50. S1.B, page 9, excludes certain activities from coverage presumably because the activities will not result in the discharge of pollutants, thus making permit coverage unnecessary. Please add the following language which will help our staff understand these activities do not require permit coverage: *The following activities are excluded from coverage under this permit. These activities do not discharge pollutants to waters of the state; therefore, a state waste discharge permit is unnecessary.* (Commenter #374, Washington State Department of Transportation)

Response: Ecology is not comfortable stating that these activities do not discharge pollutants to waters of the state. There are certain instances where the activities described in S1.B will discharge pollutants to surface waters of the state. In these cases these activities are covered under other permits which allow this activity (for instance a stormwater NPDES permit). In the case of seasonally dry wetlands, the activity should not result in the application of pesticides either directly or indirectly to waters of the state, therefore exempting them from needing a permit.

51. S1.B. I like the proviso that applying pesticides to man-made detention or retention pond that will not discharge for two weeks is excluded. However, what do you do if the pond does discharge (an intense storm arrives during the second week) within two weeks. Weather forecasts typically only extend five days into the future. Do you treat this as a spill? (Commenter #680, King County DNRP, Parks and Recreation)

Response: No, this would not be considered a spill.

52. S1.B.5, page 10, Please revise sentence to read ...*seasonally dry land surfaces (including seasonal wetlands) as long as* ... This will clarify for WSDOT staff how this exclusion applies to their roadside management activities. (Commenter #374, Washington State Department of Transportation)

Response: Ecology agrees with this comment and has added this language to S1.B.5 for clarification purposes.

Geographic Area Covered

53. S1-C, page 10- What do you mean by “some emergent noxious weeds?” That is confusing. (Commenter #698, Washington State Department of Fish and Wildlife)

Response: Ecology has clarified the language and deleted “some” and replaced it with “lake shoreline.”

54. In S1.C, the meaning of “and some emergent noxious aquatic plants” is unclear. (Commenter #666, Washington State Department of Agriculture, Plant Protection Program)

Response: Please refer to the response to Comment #53.

55. Section S1.C of the draft permit indicates that this general permit applies “. . . to the application of herbicides . . . for the control of native and non-native aquatic plants and algae. . . and some emergent noxious aquatic plants throughout the state of Washington.” Again, the distinction between marine and freshwater species covered under this new permit, as well as the distinction between what is covered under this new permit vs. what is covered under WSDA’s permit is not evident. (Commenter #699, The Nature Conservancy)

Response: Please refer to the response to Comments #2 and #53.

Additional Requirements for Sensitive, Threatened, or Endangered Plants

56. S1.D, Page 10, Please add the following: State agency applicants with access to Washington State Natural Heritage Data or that employ a professional aquatic biologist may elect to provide Ecology with a map and/or a written determination (based on a plant survey) that indicates whether sensitive, threatened, or endangered plants are present in the treatment area. (Commenter #374, Washington State Department of Transportation)

Response: Ecology agrees with this comment and has added the suggested language to the permit.

57. S1-D, page 10- There should be a similar, obvious section for fish timing windows. It can reference Tables 2 & 3, but should stand alone and provide additional contact info at WDFW. Even the link beneath the tables that provide fish timing windows doesn’t list any specific phone number or WDFW, NMFS, or USFWS biologists who should be contacted for more information. (Commenter #698, Washington State Department of Fish and Wildlife)

Response: Ecology agrees that there should be contact information provided with the fish timing window currently available on our Aquatic Pesticide website. The timing windows are not included in this permit because they were prepared by the Washington State Department of Fish and Wildlife and Ecology cannot take comments for another agency.

58. S1.D - Under “early and established infestation eradication projects:” we suggest changing the first sentence of the paragraph to read, “If Ecology determines that a sensitive, threatened or endangered plant exists in a water body, DOE shall consult with the WA Natural Heritage Program on methods to limit harm to rare plants”. (Commenter #681, Washington State Department of Natural Resources, Natural Heritage Program)

Response: Ecology agrees with the comment and has added the suggested language to S1.D.

59. In S1.D, the draft text would require a different standard than that required for ESA consultation with other agencies, leading to confusion. Also, with regard to noxious and quarantine weeds, we are concerned about the turnaround time to obtain a written response from DNR, which has received no resources to offset this workload. (Commenter #666,

Response: Please refer to the response to Comment #58.

60. Page 10, section S1, part D last paragraph. This requirement of contracting with a professional aquatic plant botanist to conduct a plant survey if Ecology determines endangered plants are present in the project are is troublesome. We already know threatened plant species occur throughout the state. This language is ambiguous enough that if Ecology chose to, they could make this requirement necessary for every aquatic permit issued in Washington. This would be very expensive and time consuming step if in fact a professional plant botanist is even available. For Thurston County this would also be a redundant step for many water bodies since surveys on lakes for aquatic plants have already been done by professional aquatic weed control staff. (Commenter #522, Thurston County Noxious Weed Control Board)

Response: For each application for coverage received by Ecology, Ecology will consult the DNR database to determine whether a sensitive, threatened, or endangered species has been detected in the lake proposed for treatment. It is only if a sensitive, threatened, or endangered species has been identified from that site that triggers the need for additional surveys for control projects.

61. S1.D. This section fails to consider plants that are culturally significant to tribes that may purposefully or inadvertently be damaged as a result of the implementation of this permit. (Commenter #667, Muckleshoot Indian Tribe, Fisheries Division)

Response: Comment noted.

62. S1.D There should be a section for endangered aquatic fish species, not just plants. (Commenter #667, Muckleshoot Indian Tribe, Fisheries Division)

Response: The information used for aquatic plants is obtained from the Washington State Department of Natural Resources, Natural Heritage Program. Under the definition for threatened and endangered aquatic species, Ecology has included links to the National Oceanic and Atmospheric Administration Fisheries and the United States Fish and Wildlife Service.

63. Section S1.D. In the “For early and established infestation eradication projects” the text only refers to herbicide. Would this prohibit the use of an adjuvant or a marker dye? An adjuvant or a marker dye could also be used for the treatment to be effective. (Commenter #697, Washington State Department of Agriculture, Registration Services)

Response: This section refers to the use of herbicides rather than the use of adjuvants and marker dyes, but does not exclude adjuvants and marker dyes from being used by a permittee. Because an adjuvant is never applied alone, but in concert with some type of pesticide, it seemed redundant to refer to them at this point in the document.

64. S1.D. On Page 10 change ‘For early and established infestation and eradication projects’ to ‘For early and established noxious weed infestation and eradication projects’ (Commenter #672, Washington State Department of Ecology, Environmental Assessment Program)

Response: Ecology agrees with the language change proposed above and has made that change in the permit.

65. S1.D. Page 10 stress that the person conducting the rare plant inventory needs to be independent of the project. (Commenter #672, Washington State Department of Ecology, Environmental Assessment Program)

Response: Ecology agrees and has added “(that is independent of the planned chemical treatment)” after professional aquatic botanist.

66. S1.D. - The first paragraph should be corrected to “the DNR Washington State Natural Heritage Program”. (Commenter #681, Washington State Department of Natural Resources, Natural Heritage Program)

Response: Ecology agrees and has made the suggested change.

67. S1.D - The requirement to contract with a professional aquatic botanist or wetland specialist in the event of finding a sensitive species may be financially unrealistic for many small business owners or the general public. There should be another option available for conducting a plant survey. (Commenter #629, Washington State Department of Natural Resources, Aquatic Invasive Species Program)

Response: Comment noted. Sometimes members of the Native Plant Society or Ecology’s aquatic botanist may be willing to take on survey projects for lake groups, if requested to do so.

S2. Permit Application Requirements

Who is the Permittee?

68. Section S2.A.1. The term chemical applicator should either be certified or licensed pesticide applicator. Add classification after aquatic endorsement to be consistent with the WAC. (Commenter #697, Washington State Department of Agriculture, Registration Services)

Response: Ecology agrees to change the term chemical applicator to licensed pesticide applicator and add classification after aquatic endorsement.

69. Page 11; section S2, part A4. This allows little flexibility with contractors. For various reasons government entities may need to change contractors in the middle of a control season which this requirement seems to preclude. A suggested change would be to issue coverage to government entities without a contractor signature, but each contractor would sign the

application before any control work is performed. (Commenter #522, Thurston County Noxious Weed Control Board)

Response: Ecology has changed the language in S2.A4 to allow government entities to obtain sole permit coverage if they choose. They also have the option of obtaining joint permit coverage with their applicator or obtaining coverage and reassigning it to their licensed pesticide applicator.

70. Allow “Public Operators” to obtain extended coverage (or waive fees altogether) within lakes. The definition of a public operator should coincide with the Applicator certification category promulgated by state law and expanded to include non-profit organizations. (NOTE: this definition can be found in the Washington Pesticide Laws and Safety publication MISC0056 and is as follows: *Public Operator-Governmental agency or a utility company employee who supervises or applies restricted use pesticides by any means or applies general use pesticides by power equipment*) Include similar coverages for private applicators contracting with or who are supervised by governmental agencies or non-profit organizations. (Commenter #671, Clallam County Noxious Weed Control Board)

Response: Ecology is already allowing the maximum amount of time for each coverage (five years) if coverage is applied for and obtained in 2006. We are unable to waive fees.

71. Requiring individual applications for weed work performed within lakes is understandable; it is unworkable for individual landowners who are told they must control their noxious weeds under RCW 17.10 and WAC 16-750. Weed boards could end up being the ones to control landowner’s weeds, which is beyond the funding capacity of any weed board and is contradictory to the intent of noxious weed control laws. For emergent noxious weed control, consider expanding coverage per permit application, allowing a county to apply for one permit for the entire county, watershed, or WRIA, and then allowing Permittees (possibly individual landowners) to work through WSDA, weed boards or other regulatory government agencies in a similar manner proposed above for lakes. Under this process licensed aquatic applicators would still be required to perform or supervise herbicide applications that might get into water. (Commenter #671, Clallam County Noxious Weed Control Board)

Response: Please refer to the response to Comment #2.

72. To clarify that government agencies are responsible for overall management and oversight of their aquatic pesticide programs, another bullet (#5) needs to be added under S2.A on page 11, as follows: Government entities that employ licensed aquatic pesticide applicators on staff may apply for coverage. Applications shall be signed by a responsible senior manager or their designee. This is consistent with and clarifies the established application process for government agencies. (Commenter #374, Washington State Department of Transportation)

Response: NPDES permits require the ranking elected official, or their designee(s), to sign any applications or official permit submittals. See Condition G14.

73. S2.A.3 – Camps: OK if the camp is willing. What about those camps that are not willing? (Commenter #4, Thomas Wimpy)

Response: If the camp is requesting to have their beach area treated, they are required to obtain joint permit coverage under this permit.

74. S2-A is too specific. Once the permit is obtained, can any chemical applicator with an aquatic endorsement make the actual application as long as the landowner does not have any objections and application records clearly show who made the application? Allow a free transfer of coverage from one qualified applicator to another, as long as the sponsor does not object and the Department of Ecology has no other reason for disqualifying the change. Aside from application records, postings should show any contact information changes and the Permittee should amend the application annually. (Commenter #671, Clallam County Noxious Weed Control Board)

Response: In the event that a government entity obtains coverage, and hires a public applicator to do the actual treatment, that applicator's contact information should be submitted to Ecology with the annual report. The government entity would be taking on all liability associated with the permit.

75. Under S2 B-How to Apply for Coverage, 2b-Allowances should be made for other types of agreements that are not strictly contractual. Signed landowner permissions or agreement forms, such as those used for knotweed control, should be allowed to meet these criteria. (Commenter #671, Clallam County Noxious Weed Control Board)

Response: This permit does not cover the treatment of individual lots for emergent weed control, so the point seems moot.

60 Day Requirement

76. S2.B.1 – 60 days prior to **and** S2.B.2.c – A copy of the public notice: So the process would be to put out a public notice, then apply for coverage, put out second public notice and then wait. Experience with aquatic weeds would lead me to believe we must anticipate all potential treatments before the ice is actually off the water body or when little or no plant growth has occurred in the early spring. Therefore we are relying on last year's information. The only answer would be to make the public notice very generalized or treat late in the year when the chemicals are less effective. (Commenter #4, Thomas Wimpy)

Response: The public notice is relatively general and only required the first time coverage is applied for under this permit. There is not an annual application process. The purpose of the public notice in the newspaper is to inform people residing in the area about the application for treatment and allow them the opportunity to comment. The more specific treatment information is supplied to people living on or around the lake 10 to 21 days prior to each treatment.

77. S2.B - Planning, weather and other operational issues (early infestation) are impaired with say the 60 day notification requirements. (Commenter #700, Long Lake Management District)

Response: The requirement to apply for coverage 60 days prior to the commencement of an herbicide application is a legal requirement. RCW 90.48.070 clearly states “Application for permits shall be made at least sixty days prior to commencement of any proposed discharge or permit expiration date, whichever is applicable.”

78. S2. Permit Application Requirements – The 60 day waiting period could make it impossible to treat newly discovered infestations of noxious weeds in lakes before the end of the season. Could this waiting period be shortened in some fashion for such cases without having to go to the legislature (if it’s even in session) for an emergency waiver every time? (Commenter #5, King County DNRP, Lake Stewardship Program)

Response: Please refer to the response to Comment #77.

79. In S2.B1, 60 days is much too long for dealing with an invasive weed that is still establishing its population. This timeframe is directly contrary to the “early detection, rapid response” principle preferred in dealing with new invasive species. (Commenter #666, Washington State Department of Agriculture, Plant Protection Program)

Response: Please refer to the response to Comment #77.

80. S2.B. Being a regulatory agency, the 60 day lead time is problematic. There is no way to predict the occurrence of a designated noxious weed on any particular property. Needing to apply for coverage 60 days prior to controlling can allow the noxious weeds to go to seed placing the property owner in violation of RCW 17.10.

Also, there is no provision for a rapid response to a newly identified noxious weed infestation. Needing to wait 60 days can cause a seasons delay in controlling which will lead to a expediential increase in the cost to eradicate the infestation. (Commenter #670, King County Noxious Weed Control Board)

Response: Please refer to the response to Comment #77.

81. S2-B, page 11- 60 days is a long time to wait for coverage. An applicant could miss the ability to effectively treat if they find a new infestation. This should be shorter, or there should be a caveat for emergency coverage. (Commenter #698, Washington State Department of Fish and Wildlife)

Response: Please refer to the response to Comment #77.

82. Section S2.B The old NPDES for noxious weed control permit held by WSDA only required 7 to 10 days for notification and approval of the coverage request, why does the WSDOE permit need 60 days? (Commenter #670, King County Noxious Weed Control Board)

Response: The coverage obtained by Weed Boards and others under the noxious weed control permit held by WSDA is not the same as getting permit coverage directly under Ecology's permit. WSDA obtained permit coverage from Ecology in 2002, completed the public notice requirements, SEPA checklist, and pays the permit fee annually. People applying to WSDA are acting as "contractors" of WSDA and are treating under WSDA's "umbrella" coverage. Because WSDA's "contractors" are not directly acquiring coverage under an NPDES permit, they follow WSDA's rules for becoming a "contractor." WSDA was able to commit to a short turn-around time, because they are not bound by a state statute.

83. The meaning of "activity" in S2.B1 is unclear. Does this mean each treatment of multiple-treatment project, or multiple seasons of treatment at the same site, or something else? (Commenter #666, Washington State Department of Agriculture, Plant Protection Program)

Response: Ecology has clarified this statement, which now reads "...prior to the planned management of aquatic plants or algae, or nutrient inactivation."

SEPA Requirements

84. S2.B - Specifically state that Ecology is the lead agency for SEPA and that Ecology will complete the mDNS. (Commenter #700, Long Lake Management District)

Response: Ecology has added the sentence "The SEPA checklist should be submitted to Ecology, the lead agency for in-lake aquatic plant and algae management projects, and Ecology will issue a SEPA determination prior to issuing permit coverage."

85. S2.B - Further explain in the permit or in the fact sheet about the requirement for a SEPA checklist- what it is, where to find it. (Commenter #700, Long Lake Management District)

Response: Ecology agrees with the comment and has added a web link for the applicants to obtain information regarding SEPA and for access to the SEPA checklist document.

86. S2.B.2.a. Include a link to information about the SEPA checklist. (Commenter #672, Washington State Department of Ecology, Environmental Assessment Program)

Response: Please refer to the response to Comment #85.

87. S2. Permit Application Requirements – Please specifically state somewhere in section B that the SEPA determination will be made by Ecology. It is not clear who signs off on the SEPA checklist or even what SEPA is. Some citizens may not be familiar with the process. (Commenter #5, King County DNRP, Lake Stewardship Program)

Response: Please refer to the response to Comment #84.

88. The SEPA process should be explained in more detail. For example, I have often times had to provide 15 copies of the SEPA checklist (and associated maps) to the regulatory agency. I have often had to post signage (ex. 4 ft x 4 ft sign) at the project site and at the nearest major intersection. I have had to post the Declaration or Non-Significance and wait additional 14 days. I have had to send the SEPA checklist to residents within 500 feet of the property. (Commenter #680, King County DNRP, Parks and Recreation)

Response: Information about the SEPA process can be obtained by contacting Ecology or referring to the website referenced in the permit.

89. Page 11, S2.B.2.a. "...and a SEPA checklist...". Where can the applicant find a SEPA checklist? Does the commercial applicator generally have this information? If we apply as a government entity prior to the hiring of the applicator, we will have to have the SEPA checklist completed and I don't know anything about it. (Commenter #2, Stevens County Noxious Weed Control Board)

Response: Please refer to the response to Comments #84 and #85.

90. Streamline the notification and application process for all eradication projects, especially early infestations. It is interesting to note that all emergent weed infestations constitute an early infestation under the definition listed on page 8, as none could occupy 20 percent of the littoral zone. (Commenter #671, Clallam County Noxious Weed Control Board)

Response: Ecology has clarified the definition of early infestation to apply only to submersed species such as Eurasian watermilfoil.

Public Notice Requirements

91. How close does the expected date of the second publication need to be? What happens if the second publication is off by a week or two? (Commenter #670, King County Noxious Weed Control Board)

Response: The two public notices are required to be published no closer than seven days apart. However, the thirty day public comment period on a permit application does not begin until the date the second notice is published.

RCW 90.48.170 currently states: *Upon receipt of a proper application relating to a new operation, or an operation previously under permit for which an increase in volume of wastes or change in character of effluent is requested over that previously authorized, the department shall instruct the applicant to publish notices thereof by such means and within such time as the department shall prescribe. The department shall require that the notice so prescribed shall be published twice in a newspaper of general circulation within the county in which the disposal of waste material is proposed to be made and in such other appropriate information media as the department may direct.*"

92. S2.C - Once per week, at least seven days apart seems redundant. What if there is no local newspaper of general circulation??? How large of an area does a local newspaper have to be?? What about large circulation newspapers for “local” coverage?? (Commenter #4, Thomas Wimpy)

Response: Publishing twice in the newspaper is required by law. The paper chosen just needs to be circulated in the area of treatment.

93. S2.C. Just a comment that the template you provide for the public notice to be published twice in the newspaper is very lengthy and will be quite expensive to publish! (Commenter #2, Stevens County Noxious Weed Control Board)

Response: The public notice template provided in the permit meets the minimum requirement for content as described in WAC 173-226-130.

94. S2.C. Why the need for placing a public notice in a newspaper for one day in two consecutive weeks? This is excessive and expensive. We estimated that to print the template, which can not be changed, would cost approximately \$158.24 for the two weeks. Running the notice once should be enough. (Commenter #670, King County Noxious Weed Control Board)

Response: Please refer to the response to Comment #92 and 93.

95. On page 11, how to apply for coverage, we have the following comments. You need to have a system up and running to do this by February of this year so that work on noxious weeds that require early treatment can begin. Your agency is required by law to have a permit available to us for this purpose and we are entering the second year where the agency has been in violation of this state law. (Commenter #3, Aquatechnex)

Response: Comment noted.

96. On page 11, public notice requirements, legal notices. In many cases, the costs of this for smaller noxious weed control programs will be excessive thereby burdening noxious weed control efforts. We are currently submitting your required wording to newspapers for price quotes. In cases where the project size is limited in scope and the cost is prohibitive, this condition will violate state law when noxious weeds are proposed for treatment. For example, we looked at a site with white water lilies that are heavily impacting a swimming area this week. The treatment cost for this homeowners group will be about \$250.00. The permit and public notice costs could easily be over \$2,000.00 because of the excessive amount of wording in your notice. That is not right and this will violate state law as it will severely burden this group. (Commenter #3, Aquatechnex)

Response: Please refer to the response to Comment #92 and 93.

97. S2.C. The permit lacks any discussion about notification procedures for affected Indian Tribes. Recommendations for notice to MIT include: WDOE notifying affected Indian Tribes

directly. In the case of MIT, any applications within WRIAs 8, 9, and 10 should be sent to the Tribe with a full 30 days to comment on the proposal prior to approval by WDOE. The Tribe should also be notified if any experimental use permits are issued within its U & A. (Commenter #667, Muckleshoot Indian Tribe, Fisheries Division)

Response: Ecology has agreed to submit both the applications and SEPA documentation for any proposed treatment projects in WRIAs 8, 9, and 10 to the Muckleshoot Indian Tribe. All permit applications have 30 day comment periods, while the SEPA checklists have 14 day public comment periods. Any concerns regarding the issuance of experimental use permits in those WRIAs listed above should be directed to WSDA's Registration Services Program.

98. In S2.C, the template provided in Appendix B applies to lakes only. Since no modifications of this template are allowed, this creates an unworkable situation for treatment of other aquatic sites. (Commenter #666, Washington State Department of Agriculture, Plant Protection Program)

Response: Please refer to the response to Comment #2.

99. Pages 11 and 12; section S2, part C. No allowance is made for modification to the public notice, yet this form is set-up strictly for lake applications directly to water. Many applications for aquatic weeds are made in riparian zones where pesticide does not contact water. Many applications are made next to streams, ditches and standing water, not in lakes. This form seems unnecessarily alarming upon reading it as a public notice, when it specifies acres of water to be treated and lake name, leading the public to believe that chemical is being placed directly into water when this may not be the case. This form seems to guarantee a negative response from the public. It does not seem wise to include species such as knotweed and purple loosestrife in this format. (Commenter #522, Thurston County Noxious Weed Control Board)

Response: Please refer to the response to Comment #2.

100. The publication notice template in Appendix B requires the applicant to state the name of the lake to be treated. Again, is this a lake permit or one that covers the surface waters of the state? (Commenter #629, Washington State Department of Natural Resources, Aquatic Invasive Species Program)

Response: Please refer to the response to Comment #2.

Permit Coverage Timeline

101. The language in S2.D.2. is extremely confusing as to when coverage commences – at the end of the public comment period, 31 days after a completed NOI is received, or some other time. (Commenter #700, Long Lake Management District)

Response: Ecology agrees and has clarified the language in S2.D.2 to read: “The NOI shall be submitted on or before the first public notice (See Condition S2.C above.). The thirty day public comment period required by WAC 173-226-130(5) begins on the publication date of the second public notice. Unless notified otherwise by Ecology, coverage under the general permit will automatically commence on the sixtieth day following receipt by Ecology of a completed NOI.”

102. S2.D.2 - Very confusing timeline. Especially if the permit coverage has an appeal process of 30 days. What if the permit were issued and the work is done and then an appeal was filed within the 30 days??? Does this extend the time of the public notice to at least 90 days prior to a treatment??? (Commenter #4, Thomas Wimpy)

Response: Please refer to the response to Comment #101. However, treatment can proceed if coverage is issued even if there is an appeal (unless there is a court-ordered injunction or stay).

103. The permit coverage timeline language is much too confusing. Does coverage begin on the 31st day following receipt by Ecology (provided all of the other steps are followed properly) or will Ecology decide to specify another date or will Ecology wait longer than 31 days to consider whether an applicant meets the requirements for coverage or will coverage begin on the date of the approval letter from Ecology? Further, a public comment period of 30 days is too long. And, in some instances, waiting 31 days for coverage may be too long. The process must be more streamlined and allowances made for necessary quick response times or emergency situations. (Commenter #629, Washington State Department of Natural Resources, Aquatic Invasive Species Program)

Response: Please refer to the response to Comment #101.

104. S2.D.2. I may be missing something here, but the whole coverage timeline seems to contradict itself. It states that the NOI shall be submitted before the 1st public notice and the 30 day public comment period begins on the date the 2nd notice is published. BUT, it says the permit coverage will commence on the 31st day after receipt by DOE of the completed NOI. This would mean that permit coverage can begin (if not otherwise notified by DOE in writing) a week or so before the end of the public comment period. Am I reading it wrong or is it misstated? Additionally, in the Application for Coverage, When to Apply, NOTE:, it says "...coverage will commence 31 days after the date of the second public notice". (Commenter #2, Stevens County Noxious Weed Control Board)

Response: Please refer to the response to Comment #101.

105. In S2.D.2, 3, and 4, three successive paragraphs appear to give at least three different dates for commencement of coverage. It appears that the timelines to obtain coverage to deal with recent or expanding noxious/quarantine weed infestations are unreasonably long. (Commenter #666, Washington State Department of Agriculture, Plant Protection Program)

Response: Comment noted. Please refer to the response to Comment #101.

106. S2.D.2. This is unreasonable. Paying for two notices up front before knowing if the permit will be approved is can be expensive. A determination on whether or not to approve the permit should be determined by the DOE from what is supplied in the application. The application will describe the method of the control work, approximate timing, the plant that is the target in the application, herbicide to be used, application rate and the water body where the application will take place. All products listed in the permit (except for any new products wanting to be evaluated through processes described in this permit) have already been evaluated by the EPA, WSDA, WSDOE and toxicologists what other information from the public is needed to determine whether or not to approve the permit? (Commenter #670, King County Noxious Weed Control Board)

Response: The public has the legal right to review and comment on any applications for coverage under Ecology's permits. The only comments that affect Ecology's decision to issue coverage are those relating to whether or not the applicant meets the general requirements for permit coverage. Comments submitted in response to the SEPA documentation may consider the environmental impacts of the actual project proposal.

107. Page 11, S2.D.3 & 5.b - The two sections do not appear to be consistent. That is, one states that Ecology will only use the comments to determine if the applicant meets the requirements; whereas, the second states that Ecology will use the comments to determine if the coverage is appropriate or not. The two references seem to conflict with one another. Perhaps some clarifying language would be helpful. (Commenter #7, Avista Utilities)

Response: Ecology reviews comments prior to issuing coverage, but will only consider those comments that specifically relate to the applicants ability to meet the requirements for coverage under the general permit.

108. On page 12, permit coverage timeline, it indicates that the timeline will not start until a complete and accurate application has been received. Your department has a history of holding these applications for some time and then indicating they are not complete or accurate, often for reasons that are not valid. This condition will be problematic if that practice continues. In the case of noxious weed control efforts, this type of thing if it occurs will burden weed control efforts if the permit is delayed beyond the optimum treatment windows. (Commenter #3, Aquatechnex)

Response: Comment noted.

109. On page 12, permit coverage timeline 2, it indicates that the NOI shall be submitted on or before the first public notice, but on the previous page it states that a copy of the public notice is a required submittal with the permit application. Newspapers do not provide this information back until they are published, and this is potentially a conflict of requirements. (Commenter #3, Aquatechnex)

Response: Ecology agrees that the language needs to be clarified. S2.B. 2.c. now reads “Prior to the beginning of the thirty day comment period, a copy of the public notice must be submitted to Ecology, and must include the date of the second publication.” There is no requirement for the two documents to be submitted at the same time. The sixty day timeline for applying for coverage begins with the receipt of a completed Notice of Intent (NOI).

110. On page 12, Ecology may require additional time to review the application under these circumstances. Any action by the Department that burdens noxious weed control efforts is not allowed by state law. This condition has the potential to do that. (Commenter #3, Aquatechnex)

Response: Ecology is required by law to further review an application if there is a concern that the treatment may cause impacts to water quality outside of what is expected under the short-term modification of water quality standards.

111. S2. Also in section D, regarding the 30 day appeal period. Can treatment go on during an appeal? (Commenter #2, Stevens County Noxious Weed Control Board)

Response: Treatment can occur during and after an appeal is filed. The only way to prevent a project from proceeding after permit coverage is issued is to request a stay or injunction from the courts.

112. S2.D.2. What are “any other relevant factors”? (Commenter #670, King County Noxious Weed Control Board)

Response: The “other relevant factors” are listed under S2.D.5.

113. Section S2.D.5.b: This seems to indicate that any public comments challenging a permit application, regardless of their validity, could generate a delay in permit approval/denial. This seems too broad an application of the public process, and could easily be abused by individuals or entities opposed to herbicide use. (Commenter #699, The Nature Conservancy)

Response: As stated in S2.D.3, “Ecology will review all public comments prior to making a determination on whether to grant permit coverage. This determination will **only consider** whether the applicant meets the requirements for coverage.”

114. Section S.2.D.5.a. add before “or” the words “based on substantive public comment.” (Commenter #33, Seattle Yacht Club)

Response: Any request for a public hearing will be considered by Ecology, but Ecology decides whether the information that is provided to support the request for a hearing warrants a public hearing.

115. Section S2.D.5.a. “There is a request for a public hearing **based on substantive public comment**, or” (Commenter #685, Northwest Marina Trade Association)

Response: Please refer to the response to Comment #114.

116. S2.D.5.d. – Is a Plant Protection Plan sometimes a requirement? If not, we suggest changing to “Mitigation is required to protect sensitive, threatened, or endangered plant species”. (Commenter #681, Washington State Department of Natural Resources, Natural Heritage Program)

Response: Ecology agrees with the comment and has replaced the language in S2.D.5.d. with the language proposed above.

Fees

117. There is no indication as to the cost of the permit. (Commenter #699, The Nature Conservancy)

Response: Permit fees are determined under a separate process from the development of this permit. Any comments concerning fees should be submitted to Ecology during fee rule development, which happens every two years. Please contact Bev Poston at bpos461@ecy.wa.gov for information about fees and the fee rule process.

118. On page 13, Length of Coverage. This talks about payment of permit fees. Nowhere in this document are permit fees presented for consideration. If they are not reasonable this will be a violation of state law with respect to noxious weed control efforts. We need this information to communicate to our clients as well. In many cases noxious weed control efforts need to begin in March/April and that means contracts need to be in place as well. That is key information that we require now. (Commenter #3, Aquatechnex)

Response: Please refer to the response to Comment #117.

119. Waive fees for noxious weed control, or at the very least, expand a permit’s coverage. For noxious weed control, if fees cannot be eliminated altogether, wave any annual fee. Instead impose a one time fee per the life of the permit, and allow additional locations to be added as they are discovered, without penalty or reapplication. (Commenter #671, Clallam County Noxious Weed Control Board)

Response: Please refer to the response to Comment #117.

120. S2.E.1. “...deny permit coverage...”
What will this permit cost? According to WAC 173-224 a permit like this costs \$327.00. The old NPDES permit had no cost associated with noxious weed control which is required by law. This may encourage people to either conduct illegal applications or to be in violation of RCW 17.10.

Also, if the applicant's intent is to control either purple loosestrife or Spartina, this permit will be in direct conflict with the intent of the Washington State Legislature. RCW 17.26.010 states "...*State agencies and local governments may not use any other local, state, or federal permitting requirement, regulatory authority, or legal mechanism to override the legislative intent and statutory mandates...*" One of the purposes of chapter 255, Laws of 1995 is to focus agency action on control and future eradication of purple loosestrife and spartina. The permit cost and other additional associated costs would directly conflict with the intent/mandate of the legislature when they wrote and passed this legislation. The legislature understands the impacts that noxious weeds have in the state and they wanted to prevent any type of barriers to noxious weed control. Increased costs are a barrier to legally mandated noxious weed control. (Commenter #670, King County Noxious Weed Control Board)

Response: Please refer to the response to Comment #117.

Denial of Coverage

121. S2-E-1-e, f, page 13- Will linking aquatic weed control and 303(d) water bodies create an artificial excuse for groups to file an injunction? I don't know enough about where the 303(d) waters occur to make a determination. (Commenter #698, Washington State Department of Fish and Wildlife)

Response: Permittees are subject to mitigation measures to prevent further impairment of an already impaired water body. The permittee treating an impaired water body must be able to show upon request what mitigation measure(s) were used to prevent further permanent impairment (outside of the confines of the short-term modification of the water quality standards allowed by the permit).

122. On page 13, Denial, No. D, this wording needs to be amended to include nonpayment of outstanding fines from any previous aquatic herbicide application permit managed by your department. If an applicator can avoid payment of fines for years, there is no reason for an applicator to comply with this permit. (Commenter #3, Aquatechnex)

Response: Ecology disagrees and the language in S2.E.1.d. remains unchanged.

123. S2.E.1.d – This section of the permit entitles Ecology to deny permit coverage for nonpayment of fines under the previous Nuisance Weed or Noxious Weed General NPDES permits, or this new state waste discharge permit. I am unaware of any such instance that currently exists within our industry. This provision allows Ecology to take on the role as the "gunslinger" eventually dictating, through enforcement actions, who the agency wishes to do business in Washington State. There is no such regulation and/or statute that allow Ecology this opportunity. Permit denial can only be based on nonpayment of permit fees and not penalties assessed against permit violations. Ecology has produced no documentation that this action is legal and already has a legal means to collect and/or enforce payment of fines. I am aware of no other Waste Water Discharge Permit that has this requirement as part of the permit approval process. This approach may soon inspire the "protection money" scheme

mentality in order to avoid penalties. Common policy of the Al Capone era.

Ecology has a long and interesting track history as to how the agency enforces regulations, who the agency decides to take enforcement action against and who the agency decides to issue monetary penalties to. As identified earlier, Ecology has been plagued with numerous administrative problems associated with permitting policies. Such poor past performance by staff personnel only leaves such questionable employees responsible for guarding the “hen house” susceptible to inappropriate offers to “look the other way”; blatantly disregarding potential enforcement actions that would result in monetary awards to the agency and financial damage to the consultant. More shocking however is the deliberate disrespect certain Ecology officials have flaunted throughout the years directly related to the issues at hand and the unprofessional approach Ecology has demonstrated against numerous contractors statewide.

Washington State has already been warned once through a lengthy court battle that they must provide “adequate standards to protect against arbitrary, erratic and discriminatory enforcement”. Before proceeding with requiring permit issuance based on unpaid fines, the agency must first document their ability to provide ethical and unbiased enforcement. This would appear to be an extremely hard task for Ecology to undertake swiftly, considering the historical track record of the agency. (Commenter #668, Northwest Aquatic Eco-Systems)

Response: Ecology disagrees and the language in S2.E.1.d. remains unchanged.

124. S2.E.2 - What other permits would actually be needed?? Are we getting it set-up so that the counties or other government agencies can have additional permits and fees?? Also, what fees are going to be charged and by who?? (Commenter #4, Thomas Wimpy)

Response: There are currently no other state permits required for the application of aquatic herbicides and algaecides to lakes. Sometimes local jurisdictions may require additional permits for in-lake projects. It is prudent to check with the local jurisdiction before proceeding with any in-lake projects. Fees will be charged by Ecology under the fee rule. Please check with Bev Poston (bpos461@ecy.wa.gov) to see the proposed fee.

S3. Compliance with Standards

125. S3. Compliance with Standards – This is an ambiguous section that will be difficult to control and implement. How is probable further impairment to be forecast and by whom? How are mitigation measures to be chosen and by whom? Who within Ecology will have the expertise to make such judgments and be able to back them up in court if necessary? Will there be routine assessment of the success of required mitigations and, if so, who will conduct it? What timelines will be in place for mitigations to occur relative to the treatments? (Commenter #5, King County DNRP, Lake Stewardship Program)

Response: Permittees are subject to mitigation measures to prevent further impairment of an already impaired water body. The permittee treating an impaired water body must be able to show upon request what mitigation measure(s) were used to prevent further

permanent impairment (outside of the confines of the short-term modification of the water quality standards allowed by the permit). Mitigation measures should be chosen prior to the treatment season, or at the time of permit issuance. Impaired sites where chemical control methods are used will receive inspection priority.

126. Confusing language: cannot cause further impairment, but can mitigate to limit impairment – this means that any treatment, even mitigated, would be a violation of the permit. Please clarify. (Commenter #700, Long Lake Management District)

Response: Ecology has revised the third sentence under S3.B to read “The Permittee shall consider and apply at least one of the following mitigation measures to prevent further impairment (outside of the confines of the short-term modification of water quality standards allowed under this permit):”

127. Section S.3.B. at the end of the first sentence add “Products listed under S.5.D.1. shall be allowed in all circumstances.” (Commenter #33, Seattle Yacht Club)

Response: Ecology disagrees and the language in the first sentence of S3.B remains unchanged.

128. In S3.B, the first and third sentences appear contradictory. (Commenter #666, Washington State Department of Agriculture, Plant Protection Program)

Response: Please refer to the response to Comment #126.

129. S3.B Please explain how Section S3-B meets the Washington Department of Ecology’s mitigation sequencing. This appears to be out of order since the permit covers the use herbicide treatments without a requirement for an integrated vegetation management approach, which would consider other measures that may have less impact on fish. (Commenter #667, Muckleshoot Indian Tribe, Fisheries Division)

Response: Ecology is allowing mitigation measures within the scope of a permit that only covers chemical control of aquatic plants and algae. Ecology has determined that when applied according to the federal pesticide label and in compliance with the terms and conditions of this general permit, these aquatic herbicides and algaecides should not cause further impairment of a water body (except during the short time period allowed by the short-term modification of the water quality standards).

130. Under S3 B - Impaired Water Bodies - The Department should further define what impairment means and whether a temporary change that does not cause long term harm might be allowed. For instance, consider increased sedimentation that might occur when a large patch of noxious weeds are removed from a streambank. Native vegetation returns, providing better stream function in the long term, but not immediately. Should the impairment caused by the noxious weeds be allowed to continue versus correcting the problem and possibly causing a short term change in some water quality parameter? More latitude should be made here. The same type of language is evident in the following section

S5 -B covering prohibited discharges. Previous language in the NPDES permit acknowledged the possibility of some limited unintended effects (see page 9 and 10 of permit WAG-993000) and should be reinstated. (Commenter #671, Clallam County Noxious Weed Control Board)

Response: Please refer to the response to Comment #129. Also the type of project described above, is more suitably permitted under the WSDA Noxious Weed permit.

131. Please define 303(d)-listed water bodies. (Commenter #629, Washington State Department of Natural Resources, Aquatic Invasive Species Program)

Response: The following definition has been added to Appendix A: **303(d):** Section 303(d) of the federal Clean Water Act requires states to develop a list of polluted water bodies every two years. For each of those waterbodies, the law requires states to develop Total Maximum Daily Loads (TMDLs). A TMDL is the amount of pollutant loading that can occur in a given water body (river, marine water, wetland, stream, or lake) and still meet water quality standards.

S4. Wetlands

132. Need a better definition of identified and/or emergent wetlands. (Commenter #700, Long Lake Management District)

Response: Comment noted.

133. Not clear as to what this section applies to-clarify that this section is for control projects only. (Commenter #700, Long Lake Management District)

Response: The title of section S4 of the permit has been changed to **S4.**

Wetlands-Control Projects.

134. It is unclear how permittees will know where identified and emergent wetlands exist or will be created as part of mitigation projects. (Commenter #667, Muckleshoot Indian Tribe, Fisheries Division)

Response: As part of the application process, Ecology will identify whether or not a wetland site (identified by a state, local, or federal authority) is included in a treatment area for control projects.

135. S4 requires use of marker dyes in all cases. WSDA supports use of marker dyes in many cases, but some pesticide label may not allow such additives. We suggest adding “when appropriate”. (Commenter #666, Washington State Department of Agriculture, Plant Protection Program)

Response: Ecology agrees and has added “when appropriate” to the section on marker dyes.

136. Marker dyes add to the expense. What is the purpose of the addition in wetlands???
(Commenter #4, Thomas Wimpy)

Response: Marker dyes allow the applicator to see what has been sprayed. This eliminates overspray of an already treated area. It can also help the applicator see if the spray is being directed only to the target species. Marker dyes are only appropriate for emergent or floating-leaved plants (water lilies).

137. S4. Wetlands – Please be specific in the definition of wetland for this permit, as there are many definitions in the literature, and it is currently a controversial area. What precise criteria will be used and/or what lists of identified wetlands will be followed? Will this be subject to change during the life of the permit? What about updates of lists? (Commenter #5, King County DNRP, Lake Stewardship Program)

Response: Ecology will search a variety of databases while processing the applications, and there will be no changes to coverages after they are issued.

138. S4. Wetlands – Please clarify if this applies to control projects only and that marker dyes are to be used only with activities involving emergent plants. (Commenter #5, King County DNRP, Lake Stewardship Program)

Response: Please refer to the response to Comment #133.

139. S4, page 14, Please change the heading from *Wetlands* to *Boat Launch and Swim Beach Control Projects*. Also, consider revising the first sentence to read: *For swim beach and boat launch control projects in identified lacustrine and/or emergent wetlands, ...* (Commenter #374, Washington State Department of Transportation)

Response: Ecology has considered the comments and decided against using the language provided. Please refer to the response to Comment #133.

S5. Restrictions on the Application of Products

Short-Term Modification

140. S5.A Without specific monitoring requirements, the components of this short term water quality modification cannot be assessed. (Commenter #667, Muckleshoot Indian Tribe, Fisheries Division)

Response: Comment noted.

141. Section S5.B.1. Remove the term surfactant. Adjuvant is a broader term that covers surfactants. (Commenter #697, Washington State Department of Agriculture, Registration)

Services)

Response: Ecology agrees and has made the suggested change.

142. S5.C - What happens if there is an event such as a fish kill after a treatment? How will it be proved that the treatment and the kill are related? What would be the consequences in such a case? It is not at all clear how Ecology could actually prove such a connection or what would happen if it could. Please make this more specific. Otherwise, it is unlikely to have any carrying power. (Commenter #5, King County DNRP, Lake Stewardship Program)

Response: Comment noted.

143. S5.C.1.a, b, & c - It seems obvious that an application would not be planned to cause the effects listed in a, b & c. What if it is an unplanned result??? (Commenter #4, Thomas Wimpy)

Response: Any adverse impacts that may have been caused by an aquatic pesticide application should be reported to Ecology. An investigation may be able to determine whether or not the application caused the impacts.

144. Section S5.D.1. After registered pesticides place “that are labeled for use on aquatic sites.” (Commenter #697, Washington State Department of Agriculture, Registration Services)

Response: Ecology agrees with the comment and has added the suggested language.

145. Section S5.D.1.c. Add salt after Dibromide. (Commenter #697, Washington State Department of Agriculture, Registration Services)

Response: Ecology agrees with the comment and has added the suggested language.

Adjuvants

146. Section S5.D.2. After registered adjuvants place “that are labeled for use on aquatic sites.” (Commenter #697, Washington State Department of Agriculture, Registration Services)

Response: Ecology agrees with the comment and has added the suggested language.

147. Section S5.E. As written, it could limit Experimental Use Permits to pesticides only. Add “and adjuvants” after pesticides. (Commenter #697, Washington State Department of Agriculture, Registration Services)

Response: Ecology agrees with the comment and has added the suggested language.

148. You should mention federal EUP's as well as state EUP's under experimental use permits. (Commenter #1, Kim Patten, PhD)

Response: Ecology has reworded the language for S5.E. State EUP's have been exempted from coverage under this permit. It now states: "Other herbicides, algicides, and adjuvants may be applied on a limited basis in the context of a research and development effort under the jurisdictions of the Environmental Protection Agency (EPA) and WSDA through the issuance of a Federal Experimental Use Permit. Coverage under this general permit is required for in-lake projects conducted under a Federal Experimental Use Permit."

149. Experimental Use Permits. More detail is needed on whether or not a product covered by a Federal EUP and allowed a certain acreage in Washington for experimental treatment also needs a State Permit. If a State Permit is required details should be provided on which permit to obtain and from what agency. If a State EUP has been granted by Dept of Ag, does this permit also need to be obtained? (Commenter #672, Washington State Department of Ecology, Environmental Assessment Program)

Response: Please refer to the response to Comment #148.

150. Table 1. Terms used to describe adjuvant functions must be consistent with American Society for Testing and Materials (ASTM) Standard E 1519. The following are corrections to meet ASTM and WSDA's standards.
- Change the heading Product use to "Type/Function."
 - Change the type/function of Agri-Dex™ to "Crop Oil Concentrate."
 - Add the type/function of Class Act Next Generation™ "Water Conditioning Agent."
 - Change the type/function of Competitor™ to "Modified Vegetable Oil Surfactant."
 - Change the type/function of Dyne-Amic™ to "Modified Vegetable Oil, Organosilicone Surfactant."
 - Change the type/function of Exciter™ to "Surfactant, Water Conditioning Agent."
 - Add the type/function of Intensify™ "Water Conditioning Agent."
 - Change the type/function of Kinetic™ to "Organosilicone Surfactant Blend."
 - Change the type/function of LI-700™ to "Acidifier, Drift Control Agent, Surfactant."
 - Change the type/function of Liberate™ to "Drift Control Agent, Surfactant."
 - Change the type/function of Interlock™ to "Penetrating Agent, Drift Control Agent."
 - Add the type/function of Magnify™ "Water Conditioning Agent." (Commenter #697, Washington State Department of Agriculture, Registration Services)

Response: Ecology agrees with the comments above and has included the suggested language into the permit.

Table 2

151. Table 2. Consider including irrigation restriction under other restrictions. (Commenter #1, Kim Patten, PhD)

Response: Because irrigation restrictions can change with the issuance of a reregistration by EPA, they are not included in Table 2. They are required on the posting notice that is placed in various locations around the water body at the time of treatment.

152. Table 2 is well done and informative, giving clear guidelines of how, when, and where. (Commenter #671, Clallam County Noxious Weed Control Board)

Response: Comment noted.

153. S5-F-Table 2, page 19- If we are spot treating one or two purple loosestrife plants in an area with triclopyr TEA for three years, then the permit indicates we will have to start ground water monitoring. This is unreasonable. (Commenter #698, Washington State Department of Fish and Wildlife)

Response: Please refer to the response to Comment #2.

154. While the restrictions and treatment limitations in Table 2 provide some protection for salmonids, they are not adequate. Other BMP and mitigation measures are needed in order to prevent potential adverse effects to salmonids. (Commenter #667, Muckleshoot Indian Tribe, Fisheries Division)

Response: Comment noted.

155. Table 2. In Table 2 the specific restriction on the use of the ester formulation of 2,4- D should be clarified as restricted **at all times of the year** in areas supporting salmonids. The specific restriction on the use of the ester formulation of 2,4-D should also apply to roadside areas and “ditches” with a potential to discharge to waters that support salmonids. EPA summarizes 2,4- D esters as highly toxic to freshwater fish (EPA 2004, <http://www.epa.gov/oppead1/endanger/effects/24d/attachment-b.pdf> page 53). (Commenter #667, Muckleshoot Indian Tribe, Fisheries Division)

Response: Ecology agrees and has added language explaining the ester formulation of 2,4-D is restricted year-round in salmon-bearing waters.

156. Table 2 - 2,4-D (amine) for control projects only limits the ability to conduct eradication projects. It also means that when applying near some floating leaved native plants that the ester will ‘burn-back’ the floating leaved plants in order to get the herbicide into the water to treat the submersed noxious weed. This really hinders eradication projects.

If the ester formulation is not allowed in salmonid waters and the amine is for control, then 2,4-D cannot be used to eradicate noxious weeds in many waterways. Is that the intent??? I

thought the research showed 2,4-D to not effect salmonids.

For the F & W timing restrictions file, many eastern Washington lakes are limited because of a large mouth bass breeding season. Since these are not salmonids, can the time restrictions be ignored or negotiated with the F & W?? (Commenter #4, Thomas Wimpy)

Response: The wording for the use of 2,4- D (amine) has been reworded to state: “When conducting a **control project**, do not apply within 400 feet of an outlet stream if there is an outflow.”

The timing windows Ecology is concerned with under this permit are strictly for salmon species. For the purposes of this permit, timing windows for large mouth bass do not apply.

157. Table 2, we need to see current timing windows before we can provide comment on this. In addition, the previous permit provided two options for dealing with these situations. The first was to inform the regional biologist of the pending application of these materials to a given site and allow them to respond or rely on the timing tables. Both options should remain in this document with respect to noxious aquatic weed control in order to comply with state laws that govern noxious aquatic weed control work. The timing window issued by the DFW are arbitrary, not herbicide specific with respect to potential impact on fish and inflexible. Providing the option to submit a written notification to the biologist has as been an option for Aquathol and 24D in the past is more flexible and still provides the Department some oversight. In this case also, the DFW has to have a legitimate reason. With the timing windows, all they have to do is issue dates with no input from the applicator community or backup for their decisions and the permit forces compliance. Reward for example is used in salmon hatcheries in a 8 hour bath where fingerlings are exposed to this material at rates 10 times higher than we used in the field to control bacterial diseases, yet the timing windows prohibit exposing them at an older age to much less material. That doesn't make sense and leaving both options to the applicator would be a much better solution to this issue. (Commenter #3, Aquatechnex)

Response: All Permittees are required to comply with the fish timing windows provided by WDFW. If there are concerns with those timing windows, it may be possible to work with WDFW to change the timing windows if there is data to support that change. In the previous permit(s) and in this permit, timing windows replaced the ability to consult with a fish biologist on individual pesticide applications.

158. Table 2. I need clarification on the treatment limitations for 2,4-D (amine). It states "For control projects only, do not apply within 400 feet of an outlet stream if there is an outflow". Does this mean 2,4-D amine can only be used for control projects (as opposed to eradication) AND do not apply within 400 feet...? Or does it mean when using this product for a control project, do not apply within 400 feet...? The first seems to mean that you can't use 2,4-D amine for an eradication project, so it is important to be clear.

Also reference this table, the difference between a swimming advisory and swimming

restriction is that buoys need to be in place if using the product (2,4-D ester) but not for the amine? And, the 2,4-D ester does not have the 400 feet from an outlet limitation. Why the difference in the two? It seems like if there is only an advisory for swimming using the amine, but a swimming restriction using the ester, the 400 feet limitation would apply to the amine, not the ester. Why the difference here? (Commenter #2, Stevens County Noxious Weed Control Board)

Response: Please refer to the response to Comment #156. The amine formulation of 2,4-D is a liquid and will tend to move through the water column more readily than ester formulation of 2,4-D which is a granular formulation.

159. Table 2. The herbicide treatment limitation that relates to nearby stream flow is vague, somewhat subjective, and therefore difficult to implement. The provisions should ideally rely on an indexed GIS stream-layer database, including both current and historic creeks and rivers. The historic water courses require inclusion since many small creeks enter the lake through pipes under the waterline, and are thus fairly invisible. Regardless of piping, these water courses may persist through inter-gravel flow that is only marginally less important than surface flow. In addition, the geographic designations (1/2 or 1 mile from certain river mouths, or the line drawn due west of Arrowhead Point) should be dealt with in such a way (e.g. – GIS) that there is both a narrative description for landowners without survey equipment, and a standard, unambiguous designation. (Commenter #667, Muckleshoot Indian Tribe, Fisheries Division)

Response: Comment noted.

Table 6

160. Table 6. Suggest changing the Title of Table 6 to ‘Specific Treatment Restrictions for Aquatic Weed Eradication Projects’. Make a consistent distinction throughout the permit between weed (meaning legally defined and listed with the state noxious weed board) and plant (inferring native or naturalized plants not on the weed list) (Commenter #672, Washington State Department of Ecology, Environmental Assessment Program)

Response: Ecology agrees with the comment and has changed the title of Table 6.

161. Table 6. *Egeria densa*: Complexed copper is proven to be extremely effective on this species. Can complexed copper be included for use to control only this species? (Commenter #670, King County Noxious Weed Control Board)

Response: Currently, Ecology does not allow the use of any copper-based products in lakes in Washington State.

S6. Notification and Posting Requirements

Ecology Notification Requirements

162. It is not reasonable, nor informative, to fax and email to Ecology every week between June and November that *Spartina* treatment is happening in Willapa Bay and Puget Sound. The state and federal partners prepare a management plan each year that shows specifically where treatment will happen. (Commenter #629, Washington State Department of Natural Resources, Aquatic Invasive Species Program)

Response: Ecology agrees and has changed the language to require e-mail only. However, this permit is not for the treatment of *Spartina*. Coverage for *Spartina* projects will continue to be provided under the WSDA noxious weed permit.

163. S6.A.1, page 23, Please revise the Ecology notification requirements to just allow email. This will make it easier for our field staff to notify your region and headquarters simultaneously. Further, it will help our agency with internal tracking and process control. (Commenter #374, Washington State Department of Transportation)

Response: Please refer to the response to Comment #162.

164. Notification requirements are fax and email. Notification should be fax or email. (Commenter #700, Long Lake Management District)

Response: Please refer to the response to Comment #162.

165. S6.A1 requires weekly pre and post treatment notification to Ecology via FAX and email. For agencies with complex programs in sites other than lakes, this is unduly burdensome, costly, and (in some cases) virtually impossible to comply with within existing resources. In addition, for all permit holders, we believe one method of notification (i.e. FAX or email) to the designated Ecology office is adequate. (Commenter #666, Washington State Department of Agriculture, Plant Protection Program)

Response: Please refer to the response to Comment #162.

166. Under S6-A, 1-the requirement to both fax and email is redundant and should be eliminated. Why is this notification required weekly? A monthly email or better yet, establishing an online reporting system should be sufficient to keep Ecology informed without overwhelming staff on either side. (Commenter #671, Clallam County Noxious Weed Control Board)

Response: Please refer to the response to Comment #162.

167. In the case of emergent noxious weed control, only those who abut or are adjacent to active application sites should have to be notified. *Please reinstate the language from the old permit as it pertains to residential and business notice procedures.* It was reasonable, effective and met the intent of the law. The new procedure is overly restrictive, expensive and likely alarms people who may not even be affected at all by an application. Again, this section paints all applications with the same lake-wide brush. For example, why does the permit require posting ¼ mile upstream along a river? The water is not going to flow

upstream. Why do you require submitting a copy to Ecology within one day of distribution? You already plan to require weekly reporting of actual work. This complicated process will require hiring an additional employee just to handle paperwork. How is it possible that an individual will be able to handle one or in the case of an applicator, multiple permits as you propose without taking on an undue financial burden? (Commenter #671, Clallam County Noxious Weed Control Board)

Response: Please refer to the response to Comment #2.

168. Please reinstate all the language from the public notice procedures section in the old permit. It contained reasonable notice and posting procedures. It was well thought out and practical, protecting the public while allowing the job to be done. It is especially important to maintain the different procedures for different types of control work. The newly proposed language does not improve public safety and is too geared toward lake issues. (Commenter #671, Clallam County Noxious Weed Control Board)

Response: Comment noted, however, most noxious weed projects will continue to be covered under the WSDA permit for noxious weeds.

169. S6.A 3c and d: On its face, the requirement to notify Ecology if any fish or fauna exhibit stress conditions or die at any distance downstream at any time, or if any non-target plant at any distance outside the treatment area exhibits stress conditions or dies at any time following herbicide treatment is excessive and overly broad. Stress and death reports should be limited to conditions that have some likelihood of being associated with off-target herbicide movement. (Commenter #666, Washington State Department of Agriculture, Plant Protection Program)

Response: Comment noted.

170. S6.A.3 – The language in this section allows citizens to complain of any or all possible effects without establishing strong connections to the treatment. The language “as a result of the treatment” is vague and does not set out a specific path to be followed to establish a connection. In addition, it is not at all clear what would be considered a connection under this permit. Please sharpen the language to make the reporting procedure clear and list what kinds of evidence could be used to establish a connection between an undesirable occurrence and a chemical treatment. (Commenter #5, King County DNRP, Lake Stewardship Program)

Response: Comment noted.

171. S6.A.3 – Why are applicators required to make suggestions for avoiding future incidents when/if they occur? Please give the rationale for including such a requirement, which seems more like hand-slapping than a professional obligation. (Commenter #5, King County DNRP, Lake Stewardship Program)

Response: Ecology would like to hear from the licensed pesticide applicator what they will do differently in the future to avoid the same types of problems. This does not

preclude Ecology from enforcing a permit violation.

172. S6-A-1, page 23- A weekly notification and report of where we plan to treat and have treated will be an undo burden on agency staff. Why would this be needed if a public notice has already been given and the site is posted? (Commenter #698, Washington State Department of Fish and Wildlife)

Response: It's important that Ecology have up-to-date information when lake treatments have occurred. Ecology often receives public inquiries about specific treatments and other commenters to this permit process have requested that Ecology post treatment site information on the website on a weekly basis. Ecology also conducts site inspections on lakes where chemical treatment has occurred.

173. Section S6.A.1: It is often difficult, if not impossible to determine exactly where treatment will occur until the actual treatment time. For example, knotweed treatment along the Skagit River can often cover 10-15 miles per day. Factors including weather, available help, and/or finding more or fewer plants than anticipated, often generate the need to adjust treatment schedules while actually in the field. In addition, as many treatment sites are remote, it is often much more efficient to treat these type of occurrences when they are first discovered, rather than making a subsequent and inefficient return trip. (Commenter #699, The Nature Conservancy)

Response: Knotweed treatments will be covered under the WSDA permit for noxious weeds.

174. Section S6.A.1: The requirement to complete post-treatment notification by 5:00 pm on Friday of the week that treatments occur will severely limit and sometimes prevent treatment from occurring on that day. Remote treatment sites often take the better part of a day to reach and return from, not to mention the time needed to perform actual treatment. (Commenter #699, The Nature Conservancy)

Response: This permit will not impact emergent noxious weed control.

175. S6.A.1 – Weekly faxes: Duplication of permitting process. If I FAX what I am doing next week why would I need to re-FAX what I'm doing this week again. (Commenter #4, Thomas Wimpy)

Response: The initial notification to Ecology will indicate locations where you plan to treat, and the following week the notification reports the locations where you actually treated. Weather or other unforeseen circumstances can adjust the treatment schedule and it is important that Ecology gets up-to-date treatment information at the close of each week.

176. S6.A.2 – Inspections: No time limit on how and when Ecology will coordinate these inspections. Does this mean that we will agree the day before, the week before or the year before?? (Commenter #4, Thomas Wimpy)

Response: Ecology regional staff will coordinate with applicators throughout the season to identify chemical treatments where they intend to conduct on-site inspections. Some inspections may be coordinated prior to the start of the treatment season, and some during the season. The inspections and inspection schedule is up to the discretion of the Ecology regional staff.

177. S6.A.3.c & d - Does this mean the applicator has to check back daily for some period of time or only when responding to somebody else's observation?? Unclear as to what is being considered appropriate follow-up. (Commenter #4, Thomas Wimpy)

Response: The permittee (applicator) should follow-up on any reports submitted to them by concerned citizens or other members of the public. If Ecology has not been informed, the Permittee should notify the appropriate regional office.

178. S6.B is extraordinarily detailed, restrictive and obviously intended to address lakes only. Viewed in light of (for example) a glyphosate application for reed canarygrass in a drainage ditch, the restrictions are inappropriate. (Commenter #666, Washington State Department of Agriculture, Plant Protection Program)

Response: Please refer to the response to Comment #2.

179. WSDOT typically applies pesticides to limited access highways or fenced wetland mitigation sites. Please add a bullet (#2) under S6B on page 24 with the following language: Residential and Business Notices are not required for applications made to limited access highways, fenced wetland mitigation sites, or other transportation facilities where no reasonable public access exists. (Commenter #374, Washington State Department of Transportation)

Response: Ecology agrees with the comment and has included the suggested language in the permit.

180. S6.B.1.a - Obtaining a list of people who withdraw water for various uses is difficult to obtain except through various government agencies and those agencies are not typically cooperative without person to person visitations to the respective offices. This inhibits the ability of the applicator to conduct projects at distant locations. (Commenter #4, Thomas Wimpy)

Response: The Permittee needs to make every effort to notify those people withdrawing water legally. This includes contacting Ecology to identify local water right holders on the lake where the treatment will occur.

181. S6.B.1.b - The list of property owners and businesses is difficult to obtain for a commercial applicator without visiting the government offices. Also, many of the landowners have legal addresses other than the water front property. In some cases, this notification would be sent out-of-state when the owner is actually at the lake residence. So what is considered

notification? Can the notice be hand-delivered to the property or does it require mailing to the legal address of the property owner? (Commenter #4, Thomas Wimpy)

Response: The notice can be hand delivered to the property or mailed, but a record must be kept of the addresses to which the notice was delivered. This record can be requested by Ecology at any time. The only requirement is that a notice is received no earlier than 21 days and no later than 10 days prior to the expected date of treatment.

182. S6.C - Notifying parents or guardians for 2 weeks is a lot of parents to notify. This extra cost (and potential decrease in camp numbers) may keep some camps from willingly participating in the eradication or control efforts. (Commenter #4, Thomas Wimpy)

Response: Comment noted.

183. Pages 25 and 26; section S6. The posting requirements may appear to be lawyer proof, but in reality they might prove to be control work proof. In other words, the posting requirements would be so costly and labor intensive to fulfill that pesticide applications would not be possible with staff and funding constraints. Suggested changes are smaller signs, less signs, no buoys, less notifications. (Commenter #522, Thurston County Noxious Weed Control Board)

Response: Please refer to the response to Comment #2. Comment noted.

184. Please add to S6D (page 25) the language in section S4F of the current nuisance aquatic plant permit (WAG-994000, page 15). This will help transportation agencies maintain consistency with established posting procedures required by Ecology. (Commenter #374, Washington State Department of Transportation)

Response: Ecology agrees and has added the suggested language to the permit.

185. S6-D-1, page 25- Requiring a posting requirement of less than 24 hours is not reasonable, nor safe. Having a start date on the notice would inform the people who were on-site prior to 24 hours (like campers) that treatment would occur during their stay. (Commenter #698, Washington State Department of Fish and Wildlife)

Response: Ecology agrees with the comment and has extended the posting to allow posting within 48 hours of the time of the proposed treatment.

186. Section S6.D.1: Many water bodies being are thousands of acres in size or dozens of miles long. Therefore, posting signs no more than 24 hours prior to treatment, as well as ensuring the signs stay in place, will be cumbersome if not impossible. (Commenter #699, The Nature Conservancy)

Response: Please refer to the response to Comment #2.

187. Section S6.D.1 & 2: The draft permit states that posting is required for all products covered under this permit. The draft permit also states that posted signs must remain in place until the end of the water restriction period. However, the permit also states that several covered products (i.e., glyphosate, imazapyr) do not have water restrictions or advisories (see Table 2 in the draft permit). It is unclear whether posting is required when using these products. (Commenter #699, The Nature Conservancy)

Response: Posting is still required for those products without water restrictions. The posting template for each product states that it must remain in place for a minimum of two days after application.

188. S6.D1 prohibits modification of templates that are clearly applicable only to lakes. However, S6.D4 requires modification of the same template under some circumstances. (Commenter #666, Washington State Department of Agriculture, Plant Protection Program)

Response: The posting templates have areas that need to be filled in by the applicator prior to posting. Section S6.D.4 speaks to the place on the template requiring notification of any fish consumption restrictions. This is not a modification of the template.

189. S6.D6 and 7 raise very serious questions regarding private property rights. They appear to require posting regardless of whether the neighboring property owner(s) – including the owners or privately owned access areas – agree to allow the posting. Also, this was clearly written to address lakes only. We do not believe posting the *Spartina* infested portions of Willapa Bay according to these conditions would be feasible or productive. (Commenter #666, Washington State Department of Agriculture, Plant Protection Program)

Response: Comment noted. This permit is intended for in-lake treatments only. *Spartina* projects will continue to be covered under the WSDA permit for noxious weeds.

190. The issue of color coding of signs occurs in S6.D and continues through many sections. This is more likely to result in public confusion than in any meaningful transmission of information, and we suggest eliminating the color coding requirement throughout. (Commenter #666, Washington State Department of Agriculture, Plant Protection Program)

Response: Ecology disagrees and the language remains unchanged.

191. S6.D7 requires very large and costly signage that may be in violation of local sign ordinances. These signs are required “anywhere the public can gain access” – arguably including illegal access across private property. The appears to be unduly burdensome. (Commenter #666, Washington State Department of Agriculture, Plant Protection Program)

Response: Comment noted.

192. S6.D.7.b. Colored signboard material of a 3ft by 4ft will be substantially more expensive than plain white. Having the date on the signboard will give any interested party the information to know that an application will or has occurred on that particular water body.

Plain white signage is all that is needed. (Commenter #670, King County Noxious Weed Control Board)

Response: Ecology agrees and has deleted the current language from S6.D.7.b.

193. S6.D8 requires buoys that, in some cases, would be in violation of U.S. Coast Guard requirements and could represent a violation of the rights of neighboring property owners. (Commenter #666, Washington State Department of Agriculture, Plant Protection Program)

Response: Comment noted.

194. S6-D-8, page 27- Posting on the water is not applicable to emergent vegetation and the section should specify this. (Commenter #698, Washington State Department of Fish and Wildlife)

Response: Ecology agrees and has specified that S6.D.8 only refers to the treatment of submersed, floating, or floating-leaved plants.

195. The posting of a sign every 100 feet of shoreline is excessive. I think that the posting of each private property within 10 feet of the shoreline is excessive. How would you handle the treatment of a lake with more than 100 residences around the shoreline that all have access (docks, beach access) to the lake? The posting could be more labor intensive than the application. The area may not be able to be accessed since it is private property. (Commenter #680, King County DNRP, Parks and Recreation)

Response: The permittee is only required to post signs at every house and every 100 feet of shoreline within ¼ mile of the treatment area.

196. Section S6.D.8: Is it possible/advisable to station buoys in moving water bodies, such as bays and rivers? Would it be incumbent upon the permittee to secure necessary permits from the U.S. Army Corp of Engineers, or the Coast Guard for stationing of buoys? (Commenter #699, The Nature Conservancy)

Response: Please refer to the response to Comment #2.

197. S6.D.1 - Within 24 hours prior to treatment is not always appropriate. In some cases, posting may start more than 24 hours prior to treatment. As an example, posting is started on Monday at 7 AM and completed by noon. The treatment may not start until noon or early afternoon the next day because of some rain or wind conditions, therefore the posting is more than 24 hours prior to treatment. This cannot always be controlled. (Commenter #4, Thomas Wimpy)

Response: Please refer to the response to Comment #185.

198. S6.D.6.c - It is not always possible to post every 100 feet or within 10 feet of the shoreline. Is there any room for common sense or discretion in posting?? (Commenter #4, Thomas

Wimpy)

Response: All permittees should strive to comply with the posting requirements as written in the permit. Ecology does retain the right to inspect sites and issue notices requiring compliance.

199. S6.D.7 - The public can gain access to any place even if trespassing is involved, including the boat access only places. (Commenter #4, Thomas Wimpy)

Response: Ecology's concern is that **designated** access areas are posted with the larger signs.

200. S6.D.7.a.i - Resort owners and other community access areas find the word "Caution" to be deleterious to their customers and users, especially when the treatment is ¼ miles away for their beaches and 1.5 miles away of their boat launch. May I suggest something like "Attention Boaters" or some other word besides Caution. The resort owners would be happier. (Commenter #4, Thomas Wimpy)

Response: Ecology disagrees and will continue to require the words "Caution" or "Warning" on the signs. Ecology and the Washington Department of Health advise people to not swim in the treatment area for 12-24 hours after treatment with aquatic pesticides.

201. S6.D.8 - Almost all treatments now have restrictions so this will have to be done in most treatment cases. (Commenter #4, Thomas Wimpy)

Response: Only the 2,4-D (ester) and endothall products have use restrictions for swimming or fish consumption after treatment. All of the other active ingredients approved for use in this permit have advisories.

202. S6.D.8.b, c, & d - The description of the buoy signs is counter-productive to the intent of the posting in my opinion. First, the buoys are to mark the treatment areas and keep people out of those areas, so why make a sign that is so small that boaters would have to go visit the buoy to read it. (Probably by pulling it out of the water and losing its position.) I would recommend coming up with some reasonable size (like a 1 or 2 gallon jug) that has a symbol on it (for example the biohazard symbol or a no swimming symbol) so the buoy can be re-used for several treatments (rather than changing colors for each treatment). These buoys could be mentioned in the posting and notification.

Also, if small areas are done, one buoy in the center would not prevent people from entering the area. My experience on lakes is that water skiers and wakeboards will be using them as slalom courses. The 100 foot interval can only be estimated. I would hate to think of the time wasted in actually trying to measure that over a shoreline treatment 2 miles long. The 100 foot interval can only be estimated. I would hate to think of the time wasted in actually trying to measure that over a shoreline treatment 2 miles long. Many of these buoys will get lost or drift because of boating activities also. (Commenter #4, Thomas Wimpy)

Response: Comment noted.

203. The word Warning should be reconsidered on the signs with that word. It is alarming and could cause problems and concerns that might not otherwise happen. (Commenter #3, Aquatechnex)

Response: The word “Warning” is required only on those products that have restrictions for swimming or recreation. Ecology believes that it is important to provide the public with the reasons why these waters are restricted after an application with one of these herbicides/algaecides.

204. Please make it possible to post the lake on the day before treatment, so that small operations are able to manage the workload. (Commenter #5, King County DNRP, Lake Stewardship Program)

Response: Please refer to the response to Comment #185.

205. On individual lots-are applicators liable for impacts on adjacent property? This could make the current 40% treatment on individual lots impossible. (Commenter #700, Long Lake Management District)

Response: The Permittee (licensed pesticide applicator) has always been liable for non-target impacts to property that was not intended to be treated. The permit allows for some incidental contact with non-target plants, but the public citizenry has the right to sue for property damage. Please note that the 40 percent treatment on individual lots has been changed in the final permit.

206. Excessive incident reporting for plants outside the treatment areas-you will get an incident report on every treatment. The language should be reworked to allow for some incidental impact to non-target plants. (Commenter #700, Long Lake Management District)

Response: Ecology agrees and has added language in S1 allowing for incidental impact.

207. Need to change language to allow buffer zones when treating submersed plants. (Commenter #700, Long Lake Management District)

Response: Ecology disagrees, however by changing treatment from a lot by lot basis to a percentage treated area based on lake size, it is less relevant to specify buffer zones.

208. Be consistent with posting timings between templates and permit language. (Commenter #700, Long Lake Management District)

Response: Comment noted.

209. S6.D. The posting requirements in this permit are excessive and burdensome. Posting signs no more than 24 hours before application may not be possible in some cases (besides which Appendix F is blank in the draft permit), nor is it the best way to inform the largest group of people. If a site is posted one hour prior to treatment, how will that inform people already on site? Do you mean “posting signs no **less** than 24 hours before application”? And how would the permittee ensure that the posted signs remain in place? To do so would require most of our staff time, taking significant time away from the treatment of noxious weeds themselves. Would the permittee be in violation if one of the signs was vandalized and/or removed? Also, is it may not be safe or legal to post on private property. Posting 2’ x 3’ signs every 100 feet along the shoreline of Willapa Bay, Puget Sound, or Grays Harbor would be unduly expensive and time-consuming. Again, this requirement seems geared towards lakes. The permit also requires posting on water when “the water body is great than one acre” and/or “the entire shoreline has not been posted.” These conditions would apply in our coastal estuaries where *Spartina* treatment occurs. So, then we would be required to place and post buoys in these estuaries, along navigation channels, every 100 feet around the treatment site? Besides being an overly-excessive requirement, you would have to get an access agreement from the public or private landowner or, in the case where buoys affect navigation (in some rivers, lakes, and estuaries), approval by the Coast Guard. (Commenter #629, Washington State Department of Natural Resources, Aquatic Invasive Species Program)

Response: Please refer to the response to Comments #2 and #185.

210. S6.F.1: This permit lacks any discussion about why the opening week of fishing is more important than any other week. The sentence is not specific, but implies the beginning of state regulated fisheries. Please note that the Muckleshoot Indian Tribe typically schedules its fisheries to occur on days separate from the non-tribal fishing community and as a result these fisheries are likely not considered in this permit condition as written. (Commenter #667, Muckleshoot Indian Tribe, Fisheries Division)

Response: The opening week of fishing refers to the beginning of state-regulated fisheries each year in lakes (typically sometime in April). At that time there are often hundreds of anglers on the lakes. Because pesticides can carry fish consumption restrictions, Ecology prefers that applicators avoid treating a lake at this time.

S7. Monitoring Requirements

211. S7.A.1. The applicant is being required to follow a monitoring plan that hasn’t yet been developed by Ecology. Our current NPDES permit calls for the applicant to develop a monitoring plan with Ecology. That was an effective system and should be incorporated into this permit. Also, submitting monitoring results by November 30th of each year is not a realistic timeframe for many control programs (e.g., *Spartina*, *Phragmites*) where control happens in the mid to late fall. Results should be submitted in January or February of the following year. (Commenter #629, Washington State Department of Natural Resources, Aquatic Invasive Species Program)

Response: Ecology has clarified the language in S7.A.1., which now states “Ecology’s aquatic plant specialist will establish monitoring requirements for any monitoring conducted under the Aquatic Weeds Management Fund grant program for eradication of submersed, floating, or floating-leaved plants in lakes.”

212. Section S7.A.1: It is unrealistic to expect permittees to agree to the terms of a monitoring plan that has not yet been developed. (Commenter #699, The Nature Conservancy)

Response: Please refer to the response to Comment #211.

213. S7.A.1 - If Ecology is going to develop the plan, who is going to pay for it? Contracts and other financial obligations are all ready finished prior to applying for the permits in the first place. How is Ecology going to let the applicators know of the monitoring requirements and when??? (Commenter #4, Thomas Wimpy)

Response: Please refer to the response to Comment #211.

214. S7.A2. - is confusing. Is the dissolved oxygen monitoring in b and c really a subset of a? In other words – is dissolved oxygen monitoring just required in water bodies listed on the 303D list for dissolved oxygen subject to DO monitoring? (Commenter #672, Washington State Department of Ecology, Environmental Assessment Program)

Response: Yes, dissolved oxygen monitoring is only required of permittees treating in lakes where the water body is on the 303(d) list for dissolved oxygen.

215. Section S7.A.2.a: Is pre- and post-treatment monitoring required **only** for control activities within water bodies that are 303(d)-listed for dissolved oxygen? (Commenter #699, The Nature Conservancy)

Response: Please refer to the response to Comment #214.

216. Section S7.A.2.b and c: The timeframes indicated for pre- and post-treatment monitoring are so specific that they do not allow for fluctuating parameters, such as tides. Regarding pre-treatment monitoring, there is often no standing water in an area just prior to treatment (this lack of water is what determines an appropriate treatment window). Regarding post-treatment monitoring, monitoring intertidal areas within a 24-48 hour time period after treatment, and **at the same time of day** could mean that the treatment area is not inundated at the time of monitoring due to tidal fluctuations. (Commenter #699, The Nature Conservancy)

Response: Please refer to the response to Comment #2.

217. S7-A-2, page 28- Is this monitoring (a-c) only for control projects using contact herbicides? It’s unclear, especially if you mean emergents, too, how do you measure DO, on pore water? (Commenter #698, Washington State Department of Fish and Wildlife)

Response: Ecology agrees and has added “when treating submersed plants” to the end of the sentence.

218. Section S7.A.2.b: The spatial requirements for pre-treatment monitoring are unclear and prohibitively time-consuming. In large treatment areas, it is impossible to know how much of the acreage will actually be covered during the day’s treatment. It is therefore impossible to monitor “at the surface and near the bottom, at the center, and the border of the proposed treatment area”. (Commenter #699, The Nature Conservancy)

Response: Monitoring is intended to occur after treatment for in-lake plants.

219. Section S7.A.2.c: Post-treatment monitoring of every location within 1-2 days of treatment will be prohibitively expensive and time-consuming. For example, there are upwards of 200 sites along the Skagit and Sauk Rivers that are planned for knotweed treatment this year. The time and expense of a return trip to monitor every location would severely limit the resources available for actual treatment. (Commenter #699, The Nature Conservancy)

Response: Comment noted. Please refer to the response to Comment #2.

220. S7.A.2 - I can understand the need to monitor 303(d) listed waters but what about other control projects? Do these same requirements apply?? I haven’t been able to locate the 303(d) list and presently do not have the equipment necessary to conduct these tests. Please advise on appropriate technology. Of course the extra time will add costs to the treatments. (Commenter #4, Thomas Wimpy)

Response: This monitoring requirement only applies to the use of contact herbicides in water bodies that are listed as impaired for low dissolved oxygen. The link to the 2002/2004 Water Quality Assessment is:

<http://www.ecy.wa.gov/programs/wq/303d/2002/2002-index.html>

221. S7.A2b appears to require dissolved oxygen monitoring for shoreline or streambank treatment of noxious weeds such as yellow flag iris. This is unlikely to yield useful information, and it appears excessive. (Commenter #666, Washington State Department of Agriculture, Plant Protection Program)

Response: Please refer to the response to Comment #217.

222. S7.A.2. Would everyone in the *Spartina* control program have to monitor? The way we currently do it is for one agency to conduct monitoring on a representative sample of treatment sites. This has proven to be an efficient method. (Commenter #629, Washington State Department of Natural Resources, Aquatic Invasive Species Program)

Response: Please refer to the response to Comment #2.

223. S7.A.2 – It seems unlikely that plants will generally have decomposed quickly enough for a significant oxygen drop within 48 hours. It would be better to make the second measurement in 3 – 5 days instead. It would also be better to submit the data to the Department immediately after determination if low oxygen levels are found, rather than waiting for the annual report before submitting the data. (Commenter #5, King County DNRP, Lake Stewardship Program)

Response: Ecology agrees with the comment and has changed the requirement to conduct post-treatment monitoring to “no earlier than five days and no later than seven days” following treatment... “Any monitoring data must be submitted in writing to Ecology within one month of the treatment.”

224. S7.B.1 & B2 – The same is true for pH monitoring. Any low values or problems should be reported immediately rather than waiting until the end of the year to make the report. Does the permit state somewhere what should happen in the case of pH falling below 6 or over 9 (Table3)? What actions should be taken? This may seem obvious, but should be spelled out in a prominent place. (Commenter #5, King County DNRP, Lake Stewardship Program)

Response: Ecology agrees and has added this information to S7.B.

225. In waters where salmonids are present, the following monitoring requirements should exist in the permit:

- Pre- and post-treatment monitoring of dissolved oxygen and pH should be conducted at the surface and near the bottom, at the center and the outer perimeter of the treatment area, and
- Post-treatment water column monitoring of any herbicide or algicide in Table 2 of the permit that may have an adverse effect on salmonids; monitoring should be conducted within 48 hours of completed treatments and should represent the water within the perimeter of the treatment area. (Commenter #667, Muckleshoot Indian Tribe, Fisheries Division)

Response: Ecology disagrees and the language in the permit remains unchanged.

226. The Lake Washington ship canal (ship canal), which includes Lake Union, is the only migration routes for adult and juvenile salmonids in Lake Washington, Lake Sammamish and the Cedar River basins. The deeper areas of the ship canal, including Lake Union, experience reduced oxygen levels that can progress from stressful (early summer) to lethal (late summer through early fall) to salmonids (SDOT, 2004; <http://dnr.metrokc.gov/wlr/waterres/lakes/0518do9.gif> , <http://dnr.metrokc.gov/wlr/waterres/lakes/a522do10.gif>). During the same period, water temperatures in the ship canal can rise from stressful and lethal levels for salmonids (<http://dnr.metrokc.gov/wlr/waterres/lakes/union.htm>). Since the ship canal is only 10-15 meters deep, and the thermocline in Lake Washington is often deeper, the ship canal often lacks any cool water refuge above the low dissolved oxygen layer on the bottom. This situation is critical for migratory salmon, which can ill-afford the extra stresses caused by prematurely decomposing vegetation and/or chemicals that have been tested on experimental fish under less stressful conditions. These conditions require that aquatic plant management

activities do not result in further degradation to water quality that could result in further impairment for the support of juvenile and adult salmonids. For example, while fish timing windows, if applied properly, may protect juvenile salmonids from dissolved oxygen (DO) sags that are induced from plant die-offs, adults will not be protected from these windows. Therefore, aquatic plant management activities during summer and fall months, when adults are present, will need to ensure that dead plants are removed after control measures are implemented at a site. A separate permit or permit conditions for these water bodies is necessary to prevent further degradation to water quality and additional stresses to salmonids. (Commenter #667, Muckleshoot Indian Tribe, Fisheries Division)

Response: Ecology agrees that there are some significant water quality issues within the ship canal area (Lake Union/Portage Bay). However, the removal of dying plant matter after a chemical treatment is extremely difficult and could cause further harm to water quality. Ecology has agreed to add monitoring requirements for the ship canal to monitor whether or not herbicide applications are significantly degrading water quality. A section has been added to S7 titled “S7.A.3. Control Projects in the Lake Washington Ship Canal.”

227. DO should be measured at 5 to 7 days rather than 24 to 48 hours if you want to see actual changes. (only applies to the use of Diquat and endothall for now). (Commenter #700, Long Lake Management District)

Response: Please refer to the response to Comment #223.

228. S7 requires an applicant to agree to unknown and speculative permit conditions. Specifically, it provides that Ecology will develop monitoring requirements without limitation after issuance. This is excessive. (Commenter #666, Washington State Department of Agriculture, Plant Protection Program)

Response: Please refer to the response to Comment #211.

229. S7.A.1. This will increase the fees associated with noxious weed control if /when Ecology determines that water quality monitoring is needed. This will undoubtedly involve submitting water samples to accredited labs for analyses which will be expensive. (Commenter #670, King County Noxious Weed Control Board)

Response: Please refer to the response to Comment #211.

230. It isn't clear if the monitoring requirements under the heading of control projects are only when contact herbicides are used or for all projects. What other monitoring is required? It appears that Ecology is taking on some monitoring responsibilities. If that is so, the effort would be much appreciated. Otherwise, how will these tests be paid for? The previous sampling protocol performed by the Department of Agriculture seemed to work well, but was expensive. Summing expenses for permit fees, notification, documentation, and possibly monitoring, will add several thousands of dollars to the cost of each project. Please make some cost projection. (Commenter #671, Clallam County Noxious Weed Control Board)

Response: Please refer to the response to Comments #2, #211, #214, and #217.

231. Also, in S7, S9.A1b and other locations, a November 30 deadline is unreasonable for annual reports of some types of treatments. For instance, the invasive knotweed treatment season often extends through November. Also, if the required monitoring involves residue analysis, laboratory results may not be available in that timeframe. We suggest February 1 following the treatment season is a more practicable date. (Commenter #666, Washington State Department of Agriculture, Plant Protection Program)

Response: Please refer to the response to Comment #2.

S8. Sampling and Analytical Procedures

232. S8.C. - From what I understand, DO and pH probes can be pretty fickle and require careful calibration to be accurate. You should reference something that lists more detailed information on what is an acceptable data collection method if you want good data. (Commenter #672, Washington State Department of Ecology, Environmental Assessment Program)

Response: Ecology agrees and has included the following language in S8.C: *All dissolved oxygen (DO) and pH monitoring should follow the protocols in "A Citizens Guide to Understanding and Monitoring Lakes and Streams," found at this link: <http://www.ecy.wa.gov/programs/wq/plants/management/joysmanual/index.html>.*

233. S8.C. – Titrating for alkalinity needs to be added to the list of analyses not requiring accreditation for monitoring, since it must be done immediately on-site if the pH falls below 6.2 (see S7.B.1) in order for the results to be used to modify treatment. (Commenter #5, King County DNRP, Lake Stewardship Program)

Response: Ecology agrees and has added this language to S8.C.

234. The permit does not require a Quality Assurance Project Plan (QAPP) for monitoring activities listed in Section 7. Without a QAPP, one will not be able to determine whether a permittee followed by a standard protocols and if equipment was functional. A QAPP should be required and filed with the application. (Commenter #667, Muckleshoot Indian Tribe, Fisheries Division)

Response: Please refer to the response to Comment #232.

235. As S8.C states, this draft permit does not require a state accredited entity to conduct dissolved oxygen and pH monitoring; this further highlights the need for a QAPP prior to monitoring in order to ensure that credible data will be collected. (Commenter #667, Muckleshoot Indian Tribe, Fisheries Division)

Response: Please refer to the response to Comment #232.

S9. Reporting and Recordkeeping Requirements

Annual Reporting

236. Section S.9.A.1.b. strike the sentence “Permittee shall submit annual treatment/monitoring reports regardless of whether or not treatment or monitoring occurred.” (The intent of reporting treatment and monitoring is fulfilled in S.9.A.1.a.) (Commenter #33, Seattle Yacht Club)

Response: Ecology disagrees and the sentence remains unchanged.

237. S9.A.1.b - Ecology should make an electronic signature system possible and available if requiring that reports should be filled out on-line. (Commenter #5, King County DNRP, Lake Stewardship Program)

Response: Ecology does not yet have the ability to accept electronic signatures. Due to the need for an original signature, any on-line reports or applications are also required to be printed on paper, signed, and submitted to Ecology.

238. Section S.9.A.2.f. Add after the word “data” the word “required.” (Commenter #33, Seattle Yacht Club)

Response: Ecology agrees and has added the suggested language.

239. Section S9.A.1.b. Strike the second sentence “The Permittee shall submit annual treatment/monitoring reports regardless of whether or not treatment or monitoring occurred.” (Commenter #685, Northwest Marina Trade Association)

Response: Ecology disagrees and will continue to require an annual monitoring/treatment report whether or not treatment/monitoring has occurred.

240. Section S.9.D. Strike the word “shall” and add “may”. (It should not be necessary to report voluntary and/or independent monitoring if such monitoring is not otherwise required by the General Permit.) (Commenter #33, Seattle Yacht Club)

Response: Ecology agrees and has made the suggested language change.

241. Section S9.D. Strike the word “shall” and add “may” as follows: If the Permittee monitors any parameter more frequently than required by this permit using test procedures specified by Section S8 of this permit, the Permittee **may** submit the results of the additional monitoring in the annual report. (Commenter #685, Northwest Marina Trade Association)

Response: Please refer to the response to Comment #240.

242. Make submittal of non-required sampling optional. (Commenter #700, Long Lake Management District)

Response: Please refer to the response to Comment #240.

243. S8.D. How is this enforceable? Is Ecology going to get a warrant to check lab records? (Commenter #670, King County Noxious Weed Control Board)

Response: Please refer to the response to Comment #240.

244. S9.D – It seems like it would be more useful for Ecology to encourage additional monitoring rather than making it a possible source for punitive actions. This requirement seems like very unlikely to encourage responsible stewardship. (Commenter #5, King County DNRP, Lake Stewardship Program)

Response: Please refer to the response to Comment #240.

S10. Spill Prevention and Control

Spill Prevention

245. I assume that the appropriate list of WDOE telephone numbers to call in the event of a spill will be specified in each permit issued. It could even be sent by WDOE as part of the permit. (Commenter #680, King County DNRP, Parks and Recreation)

Response: A list of the appropriate contacts in the event of a spill will be included with a copy of the permit when permit coverage is issued.

246. S10.A.1.b & c - What absorbent materials would be necessary for a dry chemical?? I can see the appropriate cleanup materials but those are not always absorbent materials. (Commenter #4, Thomas Wimpy)

Response: The language in S10.A.1.b has been changed to read “Absorbent materials for cleanup, or, in the event of a dry chemical spill, please consult the Material Safety Data Sheet (MSDS) for that product.”

247. S10.B - This would be a judgment call for small spills. Who is going to determine the potential of significant water quality problems?? (Commenter #4, Thomas Wimpy)

Response: That would be determined by Ecology in the event that a spill is reported.

248. S10.B – Even though referenced Section sends the reader to S6.A, which states the permittee is to report all spills immediately to Ecology, a specified minimum timeframe would be useful, given the permittee may not be able to report all spills immediately. It would also be useful to include that the permittee must report all spills immediately (or other minimum

timeframe) directly in this Section S10. B so that the permittee does not have to page through the document in times of emergency. (Commenter #7, Avista Utilities)

Response: Ecology agrees with the comments and has added the following language to the permit: ...to the appropriate Ecology regional office “*as soon as possible after the spill takes place.*”

S11. Conditional Approval For the Use of Products Not Specified in the Current Permit

249. Section S11.A.1. Change FIFRA to EPA, FIFRA does not approve pesticides. (Commenter #697, Washington State Department of Agriculture, Registration Services)

Response: Ecology has changed the permit language to reflect the suggested language above.

250. Risk assessments can be endless in terms of complexity and comprehensiveness. Okay the use of existing assessments e.g. EPA, manufacturer. Reiterate that this is only for new active ingredients. (Commenter #700, Long Lake Management District)

Response: Ecology disagrees with the comment and the permit language remains unchanged.

S12. Mitigation for Sensitive, Threatened, or Endangered Plants: Control Projects

Plant Surveys

251. Need a source of truth for sensitive, threatened or endangered plants existing in specific water. Clarify that Ecology will identify whether or not a sensitive, threatened, or endangered plant exists in a water body. (Commenter #700, Long Lake Management District)

Response: Ecology believes that the language in S12.A.1 is clear on who determines whether or not a sensitive, threatened, or endangered plant exists in a water body.

252. S12.A requires an open-ended, often multiple season, costly survey which may prevent or cause delays in treating new or expanding infestations of invasive species. (Commenter #666, Washington State Department of Agriculture, Plant Protection Program)

Response: Section S12 of the permit only covers control projects and does not include eradication activities for noxious or quarantine-list weeds.

253. S12.A.-surveys: Stress that the person conducting the rare plant inventory needs to be independent of the project. (Commenter #672, Washington State Department of Ecology, Environmental Assessment Program)

Response: Ecology agrees with the commenter and has made language changes to that effect.

254. S12.A. How many years after the treatment are annual surveys required? (assuming treatment is a one-time thing for noxious weed control) (Commenter #672, Washington State Department of Ecology, Environmental Assessment Program)

Response: For ongoing control projects, an annual survey is required (if the plant is floating, floating-leaved, or submersed) or once per permit cycle if the plant is an emergent shoreline plant.

255. S12.A – Clarify that Ecology will decide whether or not a threatened or endangered plant exists in a particular waterbody, thus triggering the requirement for a plant survey done by a responsible professional botanist. (Commenter #5, King County DNRP, Lake Stewardship Program)

Response: Please refer to the response to Comment #252.

256. S12.A, page 34- If the applicant is told a sensitive plant species is in the treatment site, there should be an option to decline to do the survey and instead chose a treatment and/or timing that mitigates the effects based on the what is know about the life history for that plant? For instance, “If the sensitive plant is an annual, treat after seed production.” This would

streamline the process and provide a similar margin of protection. (Commenter #698, Washington State Department of Fish and Wildlife)

Response: The database may not contain the exact locations of the sensitive, threatened, or endangered plant within the lake and these locations may vary from year to year. A plant survey is needed to determine the current status of the plant locations in the lake. Mitigation measures can be chosen after the survey is completed.

257. S12.A. Should be changed to “...unless exempted from this requirement in writing by DOE, pending consultation with DNR Natural Heritage Program staff”. (Commenter #681, Washington State Department of Natural Resources, Natural Heritage Program)

Response: Ecology agrees and has changed the permit to reflect the suggested language.

258. S12.B – Could an adjuvant as well as a specific pesticide warrant some of these mitigation measures? If so, you might want to add that to the opening paragraph. (Commenter #5, King County DNRP, Lake Stewardship Program)

Response: None of the adjuvants currently allowed under the permit should have direct adverse impacts.

259. S12.B – How can a buffer of 100’ be maintained for a floating plant? Is this really a viable mitigation measure? (Commenter #5, King County DNRP, Lake Stewardship Program)

Response: Maintaining a setback distance of at least 100 feet from the majority of the floating plant population is better than no setback at all. Ecology has added the following language for floating plants: *“If it is difficult to maintain a buffer of 100 feet from the majority of the floating plants, the permittee should consult with Ecology for other options (such as physically relocating the plants).”*

260. S12.B.-mitigation: Are chosen mitigation measures subject to approval by Ecology? (Commenter #672, Washington State Department of Ecology, Environmental Assessment Program)

Response: No, any mitigation measures listed in S12 can be chosen.

261. S12.B - Submersed species: Should maintain a buffer of 100 feet of the rare plant when using herbicides that are fast-acting, deactivate quickly and are known to have minimal dissipation. For herbicides that are active in the water column for an extended period and dissipate widely (such as fluridone) consult with Ecology. (Commenter #672, Washington State Department of Ecology, Environmental Assessment Program)

Response: Ecology agrees and has changed the language for submersed species to reflect that.

262. S12.B - Submersed species: Use the lowest effective concentration of herbicide for the target plant as long as you can demonstrate that the rare plant is resistant to the herbicide at that concentration. (Commenter #672, Washington State Department of Ecology, Environmental Assessment Program)

Response: Ecology agrees and has added the new language for submersed species to reflect that.

263. S12.B - Floating plants: maintain a buffer of 100 feet of the rare plant when using herbicides that are fast-acting, deactivate quickly and are known to have minimal dissipation. For herbicides that are active in the water column for an extended period and dissipate widely (such as fluridone) consult with Ecology. (Commenter #672, Washington State Department of Ecology, Environmental Assessment Program)

Response: Ecology agrees and has changed the language for floating plant species to reflect that.

264. S12.B - Floating plants: Use the lowest effective concentration of herbicide for the target plant as long as you can demonstrate that the rare plant is resistant to the herbicide at that concentration. (Commenter #672, Washington State Department of Ecology, Environmental Assessment Program)

Response: Ecology agrees and has added the new language for floating plant species to reflect that.

265. S12.B - Floating leaved plants: Some species have submersed and floating leaves, if this is the case, which guidelines are followed?

If the rare plant is something like a water lily, and the target of the herbicide application is a submersed species the mitigation measures need to follow those of the submersed species in order to protect the rare plant (in other words, herbicides that will take out a submersed species 10 feet from a rare water lily will likely impact the water lily). The mitigation measures as written are assuming that the target plant is floating leaved, not the rare plant! Make this distinction and include the mitigation measures for the submersed species. (Commenter #672, Washington State Department of Ecology, Environmental Assessment Program)

Response: Ecology agrees with the suggested language changes and has reflected those changes in S12.B.

266. S12.B - I would suggest combining the categories for submersed, floating and floating-leaved rare plants as the mitigation measure for all should be the same if the herbicide to be used will be applied to the water. (Commenter #672, Washington State Department of Ecology, Environmental Assessment Program)

Response: Ecology agrees and has combined these sections.

267. S12.B - If the target of the herbicide treatment is floating leaved or emergent and the herbicide to be used will only be applied to parts of the plant that are not in the water, then the mitigation measures should be as follows (no matter what the growth form of the rare plant is).

If the target plant is an invasive noxious weed, and it is growing closely associated with the rare plant, use the best available technology for eliminating the noxious weed while leaving the rare plant unharmed (such as herbicide injection methods, wick application, wiper brushes).

If the target plant is not an invasive noxious weed, maintain a buffer as recommended by DNR and (keep the other guidelines, but if appropriate application techniques are used by responsible applicators non-permeable barriers shouldn't be necessary. If they are necessary, be sure they are promptly removed). (Commenter #672, Washington State Department of Ecology, Environmental Assessment Program)

Response: Ecology agrees and has included the suggested language and deleted the previous permit language for emergent plants.

268. S12.B. We suggest adding a second sentence to the first paragraph reading, "Monitoring the vitality of rare plant populations may be required by DOE". (Commenter #681, Washington State Department of Natural Resources, Natural Heritage Program)

Response: Ecology agrees with the suggested language and has added the sentence above to the permit.

269. S12.B. We suggest adding to each of plants, "...choose one or more of the following mitigation measures necessary to protect the rare plants:" (Commenter #681, Washington State Department of Natural Resources, Natural Heritage Program)

Response: Ecology agrees with the suggested addition and has changed the permit accordingly.

General Conditions

270. WSDA suggests a review of all sections of G, as it appears to have been taken from a template that may not be relevant to this state draft permit. (Commenter #666, Washington State Department of Agriculture, Plant Protection Program)

Response: Ecology is required by law to include the General Conditions, many of which may not be relevant to this permit.

271. G1 appears overly detailed for a state permit. We suggest the applications and reports should be signed by an "authorized representative", and that a provision to allow an alternative

process to submit electronic version of reports (which would lack a physical signature) be added. (Commenter #666, Washington State Department of Agriculture, Plant Protection Program)

Response: Please refer to the response to Comment #270.

272. G2.D reference sampling of influent or internal hatchery waters. This appears irrelevant to this permit. (Commenter #666, Washington State Department of Agriculture, Plant Protection Program)

Response: Please refer to the response to Comment #270.

273. In the context of noxious weed control, G4, appears to be a meaningless requirement. (Commenter #666, Washington State Department of Agriculture, Plant Protection Program)

Response: Please refer to the response to Comment #270.

274. G11 appears to be written to address “facilities”, but this permit does not address facilities. (Commenter #666, Washington State Department of Agriculture, Plant Protection Program)

Response: Please refer to the response to Comment #270.

275. Why is a new application required, and possibly more fees when a Permittee changes a project from control to eradication or eradication to control? (Commenter #671, Clallam County Noxious Weed Control Board)

Response: The permit requirements are significantly different for control and eradication projects. This section now reads “The Permittee shall submit a Change in Activities form to Ecology when a project activity changes from eradication to control, or vice versa.”

276. G11. Duty to Reapply 2nd and 3rd sentences: An expired general permit continues in force and effect until a new general permit is issued or until Ecology cancels it. **Does this only apply to expired permits where the applicant has already applied for a new permit?** Please clarify.

Only those facilities that reapply for coverage are covered under the continued permit. **The sentence is awkward because it appears that “facilities” is used as the applicant. Additionally, it should be a given that once a permit expires or is canceled by Ecology that the permitted coverage ends. I’d remove the sentence for clarity.** (Commenter #7, Avista Utilities)

Response: Please refer to the response to Comment #270.

277. G5D. The permit states “the permit may be revoked, modified, etc... *when information is obtained, which indicates that cumulative effects on the environment from dischargers covered under this general permit are unacceptable.*” It is unclear to us

how we will ever know if this standard is triggered as there appears to be no plan to actually determine cumulative impacts.

Response: If credible data were submitted that showed significant impacts on the overall long-term water quality and health of a lake from pesticide treatments authorized under this permit, Ecology would review the permit and either modify it to include more stringent requirements, or revoke the permit.

Appendix A.

278. “Applicator” change to “Licensed Pesticide Applicator” or “Certified Pesticide Applicator.” (WAC 16-228-1010(7)) If use Licensed Pesticide Applicator, add reference where defined. Or add whichever one is chosen to the “DEFINITIONS AND ACRONYMS SECTION.” (Commenter #697, Washington State Department of Agriculture, Registration Services)

Response: Ecology has changed the definition to “Licensed Pesticide Applicator” and has included the reference directly from WAC 16-228-1010(7).

279. The term “control” is not adequately defined. Also, the definition of “wetland” references neither the national wetlands inventory nor the relevant DNR database. (Commenter #666, Washington State Department of Agriculture, Plant Protection Program)

Response: The definition of the term “control” has been changed to “any type of chemical treatment intended to protect beneficial uses of a water body. This could include the removal of native plants, non-native non-noxious plants, algae, and noxious or quarantine-list weeds (that are not being eradicated lake-wide).”

280. Please add “recreational uses” to VII in the list of miscellaneous Beneficial Uses that includes boating and aesthetics. (Commenter #5, King County DNRP, Lake Stewardship Program)

Response: Ecology agrees with this comment and has added “recreational uses” under the definition of beneficial uses.

281. Please add “marinas” to the list of High Use Areas. (Commenter #5, King County DNRP, Lake Stewardship Program)

Response: Please refer to the response to Comment #26.

282. The permit needs to define ditches. The Muckleshoot Indian Tribe has found that many “ditches” in its Usual and Accustomed Area are actually streams with salmonids in them. (Commenter #667, Muckleshoot Indian Tribe, Fisheries Division)

Response: Ecology finds it unnecessary to define “ditches” within this permit, because only “ditchbank” control is allowed under this permit. This is an activity primarily performed by state and local transportation or ditchbank maintenance agencies, and does

not involve the use of herbicides that treat submersed vegetation. None of the herbicides allowed by this permit that are specifically used for emergent ditchbank plant control have impacts on salmonids.

283. The definition section should also include a definition for threatened and endangered aquatic species (like fish) with links to NOAAF and USFWS information sources to keep it current. This information is important to make the Table 2 restrictions meaningful. (Commenter #667, Muckleshoot Indian Tribe, Fisheries Division)

Response: Ecology agrees and has added a definition for threatened and endangered aquatic species and included links to NOAAF and USFWS.

Appendix B.

284. This seems like a lot of information to place in a local newspaper legal notice. Is it possible to scale it down but keep the vital information? Also consider a website that includes all the information. (Commenter #7, Avista Utilities)

Response: Please refer to the response to Comment #93.

Appendix C.

285. We suggest identifying all relevant wells listed in the county well inventory, rather than “any wells”. (Commenter #666, Washington State Department of Agriculture, Plant Protection Program)

Response: Ecology agrees and has made this change to the groundwater monitoring protocol in Appendix C.

Oral Testimony

Testimony From Public Hearing in Centralia, WA

Thank you, I'm William Higday. My address is: 6827 Whitmore Drive NW, in Gig Harbor, Washington, 98335. I would like to read to you a letter that I have provided to Kelly McLain. The letter she has also includes two pictures of Sylvia Lake. So allow me please to read this letter for the record and for the people who are here in the audience.

January 9, 2006 Ms. Kelly McLain, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600

Subject: Aquatic plant and algae management site waste discharge general permit.

Dear Ms. McLain, I'm writing on behalf of the Sylvia Lake Country Club located on Sylvia Lake in Gig Harbor, Pierce County. We are deeply concerned regarding the Department of Ecology making changes to our national pollutant discharge elimination system (NPDES) permit that was approved until June of 2007. This permit was finally approved March of 2004 after a full year of very intensive work by a committee from our organization. The work required submitting an original application of 61 pages that was rejected five times before approval. With one section growing from 20 pages to 54 pages and the total document growing to a 115 pages.

This document is in the files of the Sylvia Lake at the Department of Ecology. This was not a pleasant experience, the committee felt that the permit process was an attempt to delay and or keep us from any treatment at all. Through our efforts, we were able to finally get a permit and became the first lake in Washington State with only nuisance weeds and algae to treat. How many lakes with **only** nuisance weeds and algae have permitted since the process started? Sylvia Lake is an 11 acre private lake without noxious weeds; however, it is very important to treat as needed for nuisance weeds and algae. We are concerned that the elimination of the aquatic nuisance plant and algae control permit, with the elimination the small lakes have again been overlooked as they ruled with the original permits. Many important items related to small lake problems and solutions have been left out of the new permit some of our concerns are: where does it allow for treatment of just nuisance weeds and algae? Were the interests of small lakes represented on the committee? We would have been glad to participate as we did on the NPDES committee. Will the size the of the water body testing if under 10 acres in the treatment area be taken into account as it is in the present permit? The treatment of 40 percent of the littoral zone will not work on small lakes leaving 60 percent untreated. Will equal treatment be given to small lakes without the political influence held by associations as on Lake Washington? How will the DOE be able to control and monitor all of the applications on an equal basis? We are very pleased that the Environmental Protection Agency and the courts have been instrumental in this change being made by the Department of Ecology. We are disappointed that DOE still feels obligated to permit and control federal insecticide, fungicide and rodenticide act F.I.F.R.A approved chemical applications by state licensed applicators. How many times in Washington State has there been damage caused by the proper application of chemicals to a body of

Washington State water. We have treated Sylvia Lake since April of 1971 without a single fish being killed. We have also not had a fish killed due to the decaying of plant life. We have had increased warming of the lake due to plant life. The attached photo's show what happens if the lake is not treated in a timely matter. Thank you for the opportunity to comment, further comments and questions may occur after the meeting tonight in Centralia. Very truly yours, William R. Higday, past president of Sylvia Lake Country Club.

Response: Thank you for providing testimony and written comments on the draft permit. The issues raised regarding the amount of littoral zone treatment allowed and previous permit administration problems were included in responses to your written comments.

Ok, my name is Bill Joplin I'm from 7044 Holmes Island Road of Olympia, WA. I'm the president of the Long Lake Management District within Thurston County. I'm testifying on behalf of that organization and as a concerned citizen. Following are our preliminary concerns and requests.

Number 1 is: We are a volunteer organization and the time period that we meet is once every month with the only exception of that month being December. Our next meeting is January 20 of 2006. The time allotted given most of us are volunteer and perhaps retired and off doing other things during the Christmas holidays the time period of January 20 does not allow us. LLMD or sufficient time to collectively respond to the changes. There are changes that we need to independently identify.

The information presented tonight was to identify those specific changes as notified to us in the cover letter for this meeting and we were looking forward to receiving that information so that we can more clearly understand what the changes are from the old permit. Our next meeting is January 24 we request a 15 day extension from January 20 to allow us adequate time to provide written comments.

Some specifics that we found with our group tonight prior to coming to this meeting was that reading through the permit it was a little bit difficult as it looks to focus more on the individual homeowner and seems to inhibit the overall management as conducted by lake management districts. For example whole lake management such as what was done on Long Lake relative to Milfoil, the current proposal looks like it would not have been OK to treat the whole lake with sonar for example with follow up mechanical guiding and bottom coverage to control the Milfoil. This particular project is been repeatedly recognized by WALPA and Department of Ecology as a best practice and we're concerned with as-written these kinds of practices would not be able to be recreated with this permit.

Our other concern is the 40 percent restrictions throughout the permit our real question is where is the science? The 40 percent as you have heard today and other comments and questions during the question period seems to be an unlikely restriction and one that is certainly not understood by those of us who spend many of our volunteer hours trying to

make the lake habitable, trying to make the lake enjoyable by way of recreation and also a healthy lake. Application, applicability of permit and rules relative to noxious vs. nuisance weeds did not seem clear to our water quality sub-committee when they reviewed the particular permit. That kind of concludes, we'll submit some things in writing, but we are formally requiring a fifteen day extension from January 20. Thank you

Response: Thank you for providing testimony and written comments on the draft permit. The issues raised regarding the amount of littoral zone treatment allowed, the focus on individual homeowners rather than whole lake groups, and the length of the comment period have all been included in your written response to comments.

My name is Doug Dorling I represent NW Aquatic Ecosystems. We have been involved with this new permitting system since the beginning of the process. And when we look at this final draft we feel it is a vast improvement over the system that a consultant or applicator we're involved with right now.

This permit solves a lot of the problems we've seen in the past over administration. I know there has been a lot of comments here today about some major problems within the permit, but in general this is a good, acceptable permit. The main problems associated with the permit that we see is the 40 percent residential treatment area. That is an impossible test to perform. I believe it's almost, by including this in the permit what Ecology is doing is really they are not issuing a permit, because I don't believe there is an applicator in the state that will go out and try and only treat 40 percent of a lake or a particular property knowing that it is going to drift and you are going to treat more than that. So with this 40 percent issue it is a violation, every application is going to be a violation.

How this permit is administered is really going to determine how effective it is. We've seen some major problems in administering the old NPDES permitting system, particularly with trying to cite for permit violations and feel it is really a little ridiculous on Ecology's part to try and force a penalty when a notice, your warning signs are a 1/16 of an inch smaller than what is documented in the permit.

We also feel it is inappropriate that Ecology tries to regulate on an arbitrary basis and what they have officially done is taken up the role of the gunslinger. With this permitting process Ecology has the right to deny permit coverage for unpaid penalties and fines and in the past Ecology has been very lackadaisical in the way in the way they have issued these penalties. For instance there are cases where applicators have gone out and treated the wrong lake and there have been no fines issued. There have been times when applicators have gone out and treated the wrong sections of shorelines and there have been no penalties. There have been applications this last year in 2004 where NPDES permit IAVMP's were required on Lake Washington. They were not obtained and they were allowed to treat. There were no penalties. But yet on two occasions last year, Ecology went out and again and tried to cite applicators for number 1, having their signs

not be the requested length, 1/16 of an inch smaller than they were supposed to be. We just feel that is absurd. There are a lot better things Ecology should be doing than going out and trying to measure posted signs.

There was some comment here made about treating Green Clean and using Pack 27 to treat a 320 acre lake. That's almost and impossible task, wouldn't be if you were Bill Gates, but I believe it would be if you're a Long Lake Improvement District. You're looking at an expense that is going to run you over \$300,000. Another thing we really have a problem with is again the 40 percent is probably the worst thing involved with this permit. If Ecology could change that aspect of this permit, I believe this is a very viable, workable permit. Thank you.

Response: Thank you for providing testimony and written comments on the draft permit. The issues raised in your oral testimony were included in the response to your written comments.

Testimony From Public Hearing in Spokane, WA

Why would I object to having barley straw even mentioned for a permit? Number 1...Barley straw does not kill. We've been eating barley products for how many years? We've been feeding it to our animals. We've been feeding it to our children in Campbell's soup. We've been feeding barley to most everything that we've had as far as hogs are concerned. It fattens up greatly. My thoughts are, if we can eliminate this because it does not kill, then we shouldn't even have it on this particular agenda because it's a redundant statement.

I would like to see the barley straw removed for number 2 reason...is that Jonathon Newman from the United Kingdom has already done this study, and if you'd like to refer to Jonathon Newman, it would be the Barleyworld.org out of Corvallis, Oregon. Why? Because they're using it with the turf grass association and they're finding that if you do turf grass, then you've got golf course ponds in order to put barley straw application in for their treatment. Barley straw, as far as Number 3 application, it's going to go into ponds that have to do with cranberry bogs. We've got algae in cranberry bogs that needs to be eradicated. Well, if you take ...and this is why I was asking Cathy over here if we've got anything that you're going to allow to be put into these ponds that aren't going to be anywhere near harmful to human consumption...well, it hasn't been disclosed that Barley straw is going to be harmful, because hence we've been eating it for all these years. So therefore, that's why I wanted to take a look at that list to see what we can use in the elimination of some of these plants like milfoil etc, etc.

Well those three lists of items that we just discussed why barley straw should not be even considered on the Ecology list. I would like to let those three items slide and use them for the basis. What's coming is Barley commission will be notified, there are several different pesticide companies that will be notified. These companies will have to be informed and some of the professors at WSU, Carol Lemi is going to have to be notified because this where I take my information from and also Jonathon Newman, in the United Kingdom is going to be notified and you already heard me make the statement that

Jonathon Newman said it's not necessary because it's safe. He says they're going to try and make a run on you. He says don't let them. I would like to conclude my discussion and kind of let things slide because I know that you and I are going to have a dialogue. She and I already have a dialogue and I'm going to let my case rest on what I've just stated.

Response: Ecology understands your concern issuing a permit that includes a natural product as well as aquatic pesticides. However, RCW 90.48.020 defines pollution as any material that, when placed in water, has the potential to alter the physical, biological, or chemical characteristics of that water. Barley straw does alter the chemical and physical characteristics of a water body, and therefore must be regulated under a permit.

Testimony From Public Hearing in Lynnwood, WA

My name is Cathy Lucero, and I am an employee of Clallam County Noxious Weed Control Board in Clallam County. I appreciate the ability to make these comments first off and I appreciate the fact that this permit is necessary. However, I believe it goes too far in addressing the needs that are out there as it pertains to noxious weeds. I believe the two things, the two issues noxious weeds and nuisance species and algae should be separated and this permit does not take into account the need and the mandate, the state mandate to control noxious weeds.

I am concerned about several parts of the way the permit is written. An example of the notification process I believe goes too far and requires too many things. For example if this permit is designed to notify people who may be affected by herbicide application because it mentions all water bodies and includes things like streams and rivers why one would be required to notify people upstream when herbicide would be going downstream does not seem to make any sense at all. I'm concerned about requirements in 303 listed streams in my county, there are many of them. I'm concerned about emergent plant applications that might contribute to sediment load and falling under the 303 concern. We would be required to do different monitoring that would be exception and really above what is necessary.

I'm concerned that there is a fee that will be incurred for these permits and that the weed boards may become responsible for those fees or that as individual landowners as they're required to control the noxious weeds under state law will be incurring a cost that is too much for them to bear and will make our job more difficult.

As the state has acknowledge control of noxious weeds is important and voluntary compliance, as we all know, is the best means to achieve that and going this route is going to make our job a whole more difficult. I think that Ecology should be able to work directly with agriculture to oversee the portions that relate to emergent noxious weed and maybe in-lake noxious weeds. Certainly the emergence, I think this where they have gone way over the line if they were working on in-lake problems they have certainly gone past

that. I think that the monitoring component can become a very costly part of and we haven't really examined all the effects this may have at this time.

I'm concerned portions of the application period where the timelines aren't specifically spelled out, for example a DNR is response time if there are endangered or rare, threatened species found there is nothing spelled out the time in which DNR has to respond. If they are overloading with a bunch of permits and this is a means to halt all activity this could be a problem for people who need to get treatment done. Noxious weed control is all about early detection, rapid response and the time period in which we are required to do this does not allow for that if we discover something in the season that we hadn't thought of in the beginning of the season and that is almost always the case. We're not going to be able treat that year and it's just going to be made worse and more expensive the next year. It's great that you have a 5 year permit but we might find something in an entirely different water body and that may not do us any good and we hope to be done before 5 years. So that may not be a really useful future. Also the fact that we can't blanket the whole county and we have to do it water body by water body it can become very expensive and very difficult to process. That is all the comments I wish to make at this time. I can still make written comments?

Response: Thank you for your testimony and written comments on the draft permit. All of the issues raised in this testimony were addressed in the response to written comments. The issues surrounding what this permit covers and what WSDA's permit covers have been clarified, as well as the reasons for the longer application period.

I'm Sunny Gorman I'm the noxious weed coordinator for Snohomish County. Our address is: 1136 Ave E, Snohomish. This permit appears to be far broader in scope than just for lakes. It appears to include all shorelines, lakes, rivers and streams for emergent noxious weeds. Page 7 indicates this and the definition of emergent shoreline of noxious weeds also indicates this permit far broader. One thing that needs to be mentioned right up front is herbicides are not waste. They are being according to the label, registered by the EPA, the labels are a legal document. If nothing else this waste designation needs to be changed it gives a very, very bad impression of what we are doing.

The permit itself, noxious weeds should be separated out of it all together. Noxious weeds need to be treated separately, separate permits, separate conditions, separate management goals. Having a permit for each water body Snohomish County is a big swamp in general, everything is wet. To have a separate permit for each water body makes a lot of artificial lines and gets in the way of effective, efficient weed control.

Having to do separate fees is going to get exceptionally expensive, separate reports, separate SEPAs, separate applications is going to drive the cost weed control up considerably. The fear in that is that cost goes up people would be doing weed control without permits with no oversight whatsoever.

Systems of identifying and dealing with rare and endangered plants looks like it is going to be a way of really slowing the permit process. The DNR response, experience with DNR is that they are slow in responding, which can delay treatment and allow some of these weeds to get completely out of hand.

Getting back to the permit and what is supposed to cover and what it doesn't cover. The permit itself at this point for emergent, noxious weeds doesn't cover knotweed, Spartina and loosestrife and I'm not sure about phragmites. Those are not covered under this permit since there is an existing permit, however the only reason they are not covered because there is an existing WSGA program with them. I think we have here a definition problem of what's a WSGA program. Permit WGA 99300 actually addresses all noxious weeds and quarantined list weed in an aquatic setting. That in itself puts noxious weeds into WSGA programming and all of them considered separately.

The effect of this permit is to treat noxious weeds on a different basis along shorelines. You can have a patch of something that isn't covered by a WSGA permit being treated differently in reporting, permitting and cost than the patch of something that is covered sitting right next to it. There will be more in depth letter coming from the Noxious Weed Control Board in Snohomish County. Thank you.

Response: Thank you for providing testimony and written comments on the draft permit. The issues raised regarding what plants are covered by this permit has been addressed in response to your written comments.

My name is Chris Oterroski; I'm a commodore of the Seattle Yacht Club. I have no scientific training in any of this. It's nice to hear all of these who do who can bring some specific attention to this problem. I would like to start out by first of all saying its nice to be here complimenting a state agency on something we think is a very reasonable approach to a big problem we face in Portage Bay in Lake Washington. We have a severe problem with Milfoil and the Brazilian Elodea. What really brought this to our attention, all though we have to deal with it every year and have for decades, is about 3 years ago, 4 years ago we had a pretty significant fire at our marina and the Seattle Fire Department had a big problem in being to maintain ongoing flow of pumps because it kept sucking up all the weeds. We lost a number of boats because of it and it's a real safety problem. There has also been reported incidents of at least two swimmers in this area drowning after they became entangled in some of these noxious weeds. We think it is imperative that we have an efficient and effective way to control these for public safety.

There are also the considerations of aesthetics. It is not a pleasant appearance there is often an odor as these materials die and come to the surface. The present cutting methods we have to use absent a chemical treatment result in the floating to the surface and it's a very unattractive situation.

The growth of the weeds in our area essentially prevents any swimming. It is unsafe even though we are in a water area where the temperature is conducive to swimming. There is also property considerations in the sense that we had an experience with a boat whose

propellers became entangled in these weeds, lost control and went into a house boat. I'm sure there are other examples that we are not aware of that really underscore the need to control these.

The Seattle Yacht Club has been at its present location since 1920. It has been a good citizen and pays a fair amount of taxes, a lot of money to the DNR for the lease area underneath parts of its dock. To add the expense of cutting and treating this on a regular basis adds to significant expense of our recreational enjoyment of the water way.

I think it's important for the Department of Ecology to approach this, use this as an opportunity to create a very common sense solution. I notice the permit is, I'm not sure how many pages, but it is a lot, and it looks fairly complicated. I offer the perspective of a user on the lake with a limited concern that has a repeated yearly problem to deal with. I would strongly urge that in your rule-making process you come up with a user-friendly application that is easily repeated year-to-year that has a modest fee associated with it that doesn't require a lot of education every year to bring someone new up to speed to understand what's involved in making application to do this and to apply the known science to areas. For example, where we have multiple neighbors in Portage Bay who have the same exact problem.

None of us should be forced to re-invent the wheel every time for every application. I think of some of the shoreline development permits that are required where neighbors side-by-side have to spend thousands of dollars to have consultants tell them there is no yellow grass underneath their docks even though you can see. I think you have an opportunity here to make a statement to make this a simplified approach using predictable science that is applicable to larger areas and make this as user-friendly as possible.

Again, we applaud your efforts to create a usable situation here with the use of chemical treatments to control these weeds. Thank you.

Response: Thank you for providing oral testimony and written comments on the draft permit. Ecology has addressed many of the specific issues facing Lake Washington marinas through its response to written comments.

I'm Brian Bjur, Lockhaven Marina, 3030 West Commodore Way, Seattle 98199. I'm also the chairman of the marina committee for the NW Marine Trade Association. We would also like to commend the Department of Ecology for getting the permit to this stage. However several specific comments would include the section for control, section S1A2, titled Control Submersed Aquatic Plant Control is limited to 100 percent of plants in public swim areas and public boat launch areas, except in identified wetland.

We would like it to read: One Hundred Percent of Plants in All High Use Areas, Except in Identified Wetlands. And that term is currently defined in your appendix A and that definition would be defined as high use areas are beaches, swimming areas, docks, boat

lanes, and boat ramps where vegetation will substantially interfere with recreation. If possible we would like the term “marina” added to that definition under high use areas.

Also I would like to reiterate under the notification section that the quarter mile radius for notification should not apply where there is a documented current. You should not have to notify upstream in a current. Thank you.

Response: Thank you for providing oral testimony and written comments on the draft permit. Ecology has addressed many of the specific issues facing Lake Washington marinas through its response to written comments.

I’m Steve McGonigal. I’m the executive secretary of the Washington State Noxious Control Board testifying on behalf of the board. I have a two page letter so I’m certainly not going to read it into the record. I’ll turn it in at the end of my testimony. I also may cover some points that Sunny and Cathy have already covered. So I’m just going to hit some of the high points. There will be a little bit of repetition.

Noxious weed control is required under state law. My letter cites the specific RCW and WAC. In that it is totally unlike the other activities that are included in this permit and in such ways it should be broken out separately and handled under a separate permit as it was in the NPDES. As I sat here tonight in discussion after discussion I saw that the linking of the two different types of activities required by law and other caused many of the difficulties we heard described tonight. No state agency should be adding to the difficulty and expense of our citizens for complying with state law and this permit unfortunately would do so.

FIFRA registered pesticides are not waste. So this has been determined over a period of time recently by none other than the U.S. Circuit Court of Appeals and the U.S. Environmental Protection Agency. So a waste permit simply doesn’t fit and again we’re seeing problems in trying to regulate an activity with a regulatory tool that doesn’t apply.

Fees and I literally ask what the fees are? We discussed that tonight. But I have to testify for the record that the vast majority of the new entities that are out there that are going to become subject this permit when it becomes effective. They don’t know what the fee is and they don’t know why it is that way. I would also like to see some discussion in the response to the testimony as to where the revenue goes that the fees pay for. For these are after all, a..., are we going to new staff within the Department of Ecology to issue these permits than we could understand that if its existing staff than their time, their housing, their overhead is already paid for as far as I know. So we would like to know where the money is going to go. Keep in mind that we’re asking this money eventually, it comes from citizens that own the property that have to control the weeds and it’s paying a fee to get a permit for the privilege of complying with the law. So lets remember that as we get further and further into their pocket for a permit that is costing them money in many other ways in addition to the fee.

Moving on, one of those additional ways it's costing them money is the cost of the legal ads. It is going to be very high in some cases. In fact, too high. We have questions about geographic areas. Some of that came up tonight. And the per water body requirements simply isn't going to work in all cases, in some perhaps, but there is others where it will cause noxious weed infestations to go untreated. Concern that there are many new entities that are going to come under the permitting requirements under this new permit that previously got coverage under other agencies like the Department of Agriculture and that they're currently unaware of the impact it is going to have on them. The Department of Ecology did what it had to do to make announcements but we didn't see any active outreach programs. So I'm asking for an active outreach program for Ecology to try to identify the entities that previously were under other coverage and make sure that they have been contacted and made to understand what the impact is going to be on their operations.

Reporting costs, we are concerned about those and not just the dollar amounts but the staffing on some of these entities, like local weed boards that are already understaffed. It's too burdensome the way it is and will cause in some cases noxious weeds infestations not to be treated.

I asked questions in my letter about treatment during appeal. We really want to hear an official statement that treatments can go on during the appeal process. For this permit could be, and we feel will be, used as a tool to simply prevent the kinds of treatments it is meant to regulate.

We would like to see provisions for early detection and rapid response of noxious weed situations and we currently don't see it in there. Might not be needed in the other activities that the permit regulates and there's that difference again.

Finally we ask, we would like to see some stability and predictability in regulation. It hasn't been just a period of a few years over which people had to, people who were used to the short-term modification program had to get used to the NPDES program. There was a period between those two permits when the no permits were available at all and some noxious weed treatments in fact did not occur and infestations that had been well on their way to eradication rebounded considerably.

I appreciate the opportunity to testify. We may have some more comments before January 27.

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I appreciate the opportunity to testify. We may have some more comments before January 27.

Response: Thank you for providing testimony and written comments on the draft permit. The issues raised during your testimony have already been responded to in the response to your written comments.

My name is Doug Dorling I reside at 4426 Bush Mountain Drive. Most of our comments are going to be submitted in a letter format, but tonight I just want to address two issues.

The first one being the 40 percent treatment zone that is identified in the permit. I'm a little confused at how Ecology has arrived at that precise number. TheNPDES process where we were involved with integrated aquatic plant management plans. Ecology mandated if a lake association did not have an approved plan you were allowed to control 50 percent of the littoral zone of the lake and with an approved IAVMP you were allowed to treat 75 percent of the littoral zone of the lake. I can only assume Ecology used good scientific data to establish those specific numbers and percentages. So my question to Ecology tonight is what new data has Ecology come across that will sustain their new mandate of 40 percent? What will happen if we cannot treat at least up to 50 to 75 percent of littoral zone . You are going to see situations where people who swim in that 40 percent zone are going to come out looking like this (sound of holding up picture).

There is also a question in the permit about no use of, no filamentous algae control. I was down in Centralia the other night, there was comments made about hand harvesting the filamentous algae with nets and this, that, an another thing and filamentous algae problems pose the same type of problems that noxious and nuisance weeds pose to lake systems. I have another picture here of a filamentous algae problem and I cannot believe that Ecology does not believe that this is a problem. (sound of holding up picture).

Again, the rest of our comments are going to be submitted in a letter directed at various other portions of the permit. Thank you.

Response: Thank you for providing testimony and written comments on the draft permit. The issues raised during your testimony have already been responded to in the response to your written comments.

Good evening, my name is Ed Bowman PO Box 111 Clallam Bay, WA 98326. I am a resident of Lake Ozette, WA the third largest lake in the state second behind, or just behind Lake Washington. We have pretty good conditions and I want to see it stay that way. I believe this permit takes away the ability of my rural setting to address an issue that I've had to deal with a long time that's dealing with invasive, noxious weeds. It blows into one single area a process that we already had in place to be able to deal with knot weed in our basin and now we're faced with other weeds such as reed canary grass that we won't be able to deal with outside the scope of this permit.

This permit will cause us the problem of being able to be connect to the process because we are so far away. We don't have reliable phone, we don't get service by FedEx and UPS by the way, so we don't have the normal situation that the urban areas would have in dealing with the process. It's difficult to make the phone calls and so the process itself is a burden. Secondly, the expense to me as a landowner in a recent release by the NOA, National Marine Fisheries Service on an economic analysis of the impact of ESA listed salmonids. They claim the economic impact of that ESA was only \$32 per resident. So you must see that they don't value our economic situation out there. So I don't have a lot of money to spend in the first place versus \$327 for a permit.

The key thing though that I want to bring up is the ability that we currently have that this permit is going to take away. That is the ability for early detection and rapid response. We are good stewards of our land out there and we have always had to depend on ourselves and we've always taken care of ourselves. We didn't even have a road into the area from the outside world until 1935. So, it's basically we've always had to depend on ourselves and now we are going to have to go through a lengthy process what we will believe, because we are so dislocated that we are not going to be able to respond to a particular noxious weed that starts taking over in our area.

I want to give a quick history of one example, knotweed that is currently covered. My neighbor to the south of me found it in the Dicky River and he started taking care of it and I started paying attention "oh what's going on in my basin?" and within a 5 year period I saw a single source plant go from being just a beautiful plant to being a complete overrun of the entire Big River system. I don't have the time; there is only 40 of us out there in a 110 square mile water basin. There is not enough of us to react and respond to something so we have to call upon our government to help us out. Fortunately our weed boards are doing a lot to help us.

The last thing I want to do is the ability of this permit, the lack of the ability of this permit to address a basin wide vs. a particular water body it goes right back to knotweed.

If I find something in my basin on Big River, or Umbrella creek and I have a permit for that but my neighbor up at Palmquest Creek he all of a sudden starts seeing this stuff pop up but he's not permitted. So now we've got to wait for that permit to go through its process just to take care of a problem that we all ready know how to do it, we already know how treat it.

The key thing here, and I don't think its been brought up is the purpose of a rapid response is to limit the use of herbicides. I mean we've got B-52's out there that can drop tons and tons of this stuff if we want. But I want to find this stuff now. I want to identify that it's going to be a problem and I want to use a limited amount of herbicide to get the problem out of my basin. That's the key source for the sole sake, not just for the environment, but for us too. Because we are surface water draw culinary water systems out there. So I don't want to be drinking this herbicide. So I want to use a limited amount of herbicide to get to the problem and get it back out of there. Thank you very much.

Response: Thank you for providing testimony on the draft permit. The issues you have raised during your oral testimony have been addressed through the response to the written comments detailed earlier in this document.

List of Commenters

Anderson Lake

12	Hal & Karen	Tye
13	Charles	Fogle
14	Ron	Hagedorn
29	Mike & Elaine	Brown
30	Michael	Wright
31	Jack	Nicholson
32	Georgia	Huntley
129	John	McGregor
397	Giles & Leslie	Swanson
398	Ron and Joanne	Quiring
562	John	Perreault

Aqua Vista Pond

135	Diane	Rutherford
541	Suzanne	Strom-Reed
473	Stephen	Heller
498	Clark	Small
543	William & Lora	Cyr
631	Michael	Jaglois
645	Mary Ann	Barkshire
655	Stephen	Winsby
656	Barbara & David	Neely
373	Phil	Kenney

Beaver Lake

8	San Juanita	Flores
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Birch Bay Village

37	Peter	Besas
144	William	Begue
150	George	Emmett

Carillon Point

401	William	Dragon
402	Miklos	Endrody
474	Robert	Stephenson
477	Matthew	Clemens

492	Sam	Lake
493	Milinda	Dwyer
496	Barry	Rose
500	William	Davis
501	Sue	Hooper
502	Lino	Niccoli
513	Carey	Breunan
515	Marilyn & James	Rumpakis
516	Gary	Cone
518	(Unreadable)	
519	Peter	May
520	David	Smith
524	Otto	Hanssen
525	Scott & Cindy	Minette
526	Gary	Henderson
528	Gary	Vanderkoy
529	C	Hanson
531	John	McAdam
542	B C	Breckenridge
545	Randy	Hammond
546	Kendra	Vandermeulen
547	Nina & Christopher	Peterson
554	Janet	Levinger
556	Joan	O'Connor
560	Richard	Schwasnick
563	Daniel	Ivanoff
564	Sherry & John	Douceur
567	David	Hannah
568	Gordon	Duncan
570	Terry	Kelley
571	(Unreadable)	
572	S	Hiker
580	Ronald	Gai
583	Jack	Cummings
584	The	Cassady Family
585	Dave & Alix	Despard
586	Keith	Oliver
588		Calknapp
590	B	Sach
594	Paul	Franks
595	David	Eastman

604	Wayne	Laufer
605		Rodner
608	Bill	El-Kawa
609	Don	Emmanual
614	Mrs. Barry	Rowan
619	Jeffrey	Weems
620	Nathan	Haass
621	Perry & Tina	Krallis
625	Chris	Newton
638	S	Isacson
643	Douglas	Folson
650	Andreas	Schmidt
652	(Unreadable)	
720		Johnson
721	Sandra	Bender
722	TS	Sullivan
723	Dwayne	Wal

Concerned Citizens

15	Lewis	Harder
17	Diane	Quande
21	Ken	Bellamy
43	William & Bettylee	Cramer
44	Dan	Smith
106	S T	Newton
133	Curtis	Bailey
133	Jeffrey	Bailey
136	M	Peterson
137	Leonard	Almo
148	Frederick	Hayes
151	Larry	Magnan
156	Leonard	Landon
494	Mr & Mrs Alan	Peterson
517	Andrew	Barlass
521	Mr & Mrs Carl	Wood
596	Jim	Richards
34	Kyle	Anderson
626	Robert	Hale
628	Dwight	Shaw
630	Richard	Johnson
633	Diana	Forman

686	Betty	Swift
136.5	David	Fluke
691	B Dwane	Jackson
690	Everett	Johnson
688	Frederick	Beck
683	Richard	Benson
669	Roger	Orth
674	Kay	Olsen
677	Penelope	Lewis
678	Molly	Bailey
87	Mary Ann	Riley
103	Sharon	O'Hara
376	Robert	Ovens
386	Jana	Wiley
675	Janet	Strong
633	Bob	Trimble
481	Gerry	Milliken
578	Pat	Sampson
634	Jerry	Bennett
704	Laurel	Baldwin
703	Sharilyn	Anderson

Fawn Lake

145	Brian	Roberts
158	James	Curtis
	Lawrence &	
217	Nancy	Hurst
218	Earl & Sheila	Palmer
561	Ronald & Donetta	Frederick
707	Judy	Madden

Government Entities

1	Washington State University
2	Stevens County Noxious Weed Control Board
5	King County DNRP, Lakes Stewardship Program
88	Washington State Noxious Weed Control Board
374	Washington State Department of Transportation
377	Lewis County Noxious Weed Control Board
387	Lincoln County Noxious Weed Control Board
455	Town of Hunts Point
466	Pend Oreille County Noxious Weed Control Board

468 City of Federal Way
 522 Thurston County Noxious Weed Control Board
 629 DNR, Invasive Species Program
 666 WSDA Plant Protection Program
 667 Muckleshoot Indian Tribe
 670 King County Noxious Weed Control Board
 671 Clallam County Noxious Weed Control Board
 672 Ecology, Environmental Assessment Program
 673 Snohomish County Noxious Weed Control Board
 680 King County DNRP Parks and Recreation
 681 DNR Natural Heritage Program
 684 City of Maple Valley
 697 Washington State Department of Agriculture, Registration Services
 698 Washington State Department of Fish and Wildlife
 702 Ecology, Shorelands and Environmental Assistance

Gravelly Lake

11	Robert	Averly
16	Earl & Diane	Akins
18	Kris	Kauffman
25	Kris	kauffman
20	Steve & Kathy	Gaud
22	Ottie	Ladd
24	Dave	Mitolo
38	John	Sessler
40	Michael	Tucci
41	John & Cindy	Clapper
42	Michelle	Tucci
46	Herb	Munson
126	Timothy	Tucci
127	Michael & Debra Flynn	
153	Richard	Myers
154	Martin	Kuhns
171	Ross	Drangsholt
172	Gayle	Hampton-Smith
173	M	Shepard
174	Roger & Janet	Norbom
175	Janet	Creasia
176	Kyle	Smith
177	Eri	Jessup
178	Darrell & Ame	Jesse

179	Lenore	Wyatt
180	David & Mary	Young
399	Dan & Lori	Durr
26	Morris & Bette	Kirk
444	Ronald	Pemberton
456	Kathy	McGoldrick
503	Steven	Rogel
523	Carol	Milgard
573	Robert	Kovich
574	Cara	Harter

Ken Lake

130	Wayne	Gruen
131	Carol	Gruen
149	Marle	Christensen
155	Doug & Barbara	Bohlke
191	Y E	Aldrich Jr.
192	Mr & Mrs William	Olson
193	Pat	Lashway
194	Rosalin	Wilmes
194.5	Jerome	Wilmes
195	Monty & Lorie	Harmon
196	Diane	Paget
	David	Paget
197	Urnesti	Varishis
198	Veena	Vashisth
199	Kenneth	Saet
200	Janice	Saet
201	Shirley	Swan
202	Edward	Swan
203	Lloyd & Patricia	DeBoer
204	Judith	Martig
205	Jeanne	Piteryer
206	Bob	Michelson
207	Lars & Trudie	Yarberough
208	Patricia	Ames
209	Col. Garth	Holmes
210	Elizabeth	Foote
211	Gary	Foote
212	Dirk	Havlak
213	Joi	Ebbert

214	Donald	Kid
215	Michelle	Newban
216	(Unreadable)	
482	Paul	Drinkard
483	Susan	Drinkard
559	Peter	Waugh

Lake Bonney

219	Jeffrey	Brain
220	Drebra	Ewing
549	Ken & Dana	Stephens

Lake Debra Jane

181	G Lenore	Faulk
550	Wendy	Schwartzna
576	Keith	Arionus
603	Deborah	Lanier

Lake Josephine

443	Toni	Rex
484	Herbert	McKay
511	Mary Jane	Bond
544	George	Bean
548	Douglas	Hart
552	Fred & Laurie	Axe
553	Robert	Pletcher
565	George	Brown
566	Albert & Lucinda	Mazzeo
569	D.L.	Hrdlicka
	Gerald &	
581	Geraldine	Hamann
582	Mary Arnette	Jackson
592	Mr. & Mrs G.	Jackson
599	James	Mclean
600	Patty Jo & Bernard	Vollrath
601	Roger	Reagan
602	Sharon	Donough
606	Alexandria	Bohlman
607	David & Marita	McCallen
610	Ronald & Carmen	Schmitz
611	Nancy	Robinson

612	Charles	Huntington
613	Steven	Wright
635	Bruce Dunlap	& Patricia McNabb
637	K L	Swinth
639	Glenn	Parman
640	Lucia	Tuquero
641	Oran	Hooks
642	Lisa	Phillips
644	Dale	Labelle
649	Kenneth	Ripley
651	J	MacKay
658	Tom & Sylvia	McMullen
659	Randall	Harper
665	David	Howe
706	Spencer & Ann	Willardson

Lake Killarney

132	Fran	Morris
134	Paul	DesJardin

Lake Limerick

159	David	Kohler
170	Robert	Koenig

Long Lake Management District

700	Long Lake LMD	
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Lake Minterwood

237	Norman	Scott
238	Gertrude	DeLaney
445	Jim	Hefferman
446	Thomas	Clough
447	Michael	Nole
448	Terri	Hefferman
449	Laura	Duncan
450	William	Banks
451	C L	Gerhard
452	Robert	Morgan
453	Diana	Nole
454	Jeanette	Banks
575	Gae	Gilhousen

579	Robert	Sandquist
	<u>Lake Steilacoom</u>	
9	Ron	Messenger
10	Dennis	Drouillard
23	Pat	Lunell
25	Carol	Ludwig
27	Jennifer	Holmes
28	Louis	Imhof
35	Jason	/whalen
36	Patricia	Worlill
39	Steven	Wolfgram
128	Gregory & Janet	Baradat
138	John	Crabill
139	Philip	Spilger
140	Cynthia & Jay	Peterson
141	Denny & Susan	Helseth
142	James	Stone
143	Patricia	Terry
146	Margery	Lovely
146.5	Mark	Ceccarelli
147	George	Sharp
152	Patty & Mark	Anderson
157	Danielle	Sharp
169	Jan	Noges
396	Chad	Wirth
389	Paul	Noges
385	Jan	Noges
182	Dennis & Mary	Dearth
183	Steven	Hillis
184	Diane & Larry	Bauml
185	James	Yurina
186	Bruce & Debbie	Bodine
187	Jill	Goodman
188	Robert	Goodman
189	Susan & Larry	Todd
190	Gary	Barton
396	Donnie	Martin
475	(Unreadable)	
476	Roz	Saidali
512	Jeff	Watts

551	John	McGowen
577	Philippe	Michel
589	Mark	Lindstrom
598	Jan & James	Cook
648	Warren	Wier
676	Lou	Imhoff
661	Brooke & Chris	Schuist

Lake Wilderness

45	Dave	Barber
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Newport Shores

77	Ken	Lombardo
239	Nobue	Kudo
240	Daisy	Neves
241	Glen	Thorsted
242	Fred	Reeb
243	Dwayne	Zeigler
244	Marlene	Tomberg
245	Doug	Cairns
246	Terry	Thomason
247	Charles	Brooks
248	Donald	Halvorson
249	Thomas	Greime
250	Marlene	Trees
251	Robert	Caplan
252	Lillian	Waterhouse
253	Steven	May
254	Bonnie	Currey
255	Heidi	Davis
256	Barbara	Shellan
257	Julie	Dugge
258	Mary Jane	Gross
259	Ishaque	Mehdi
260	Jeff	Johnson
261	Joyce	Razee
262	Pete	Fiala
263	Rick	Davis
264	Merritt	Matkin
265	Greg & Lisa	McNab
266	Barbara	Butterfield

267	Mike	Dihn	
268	Dorothy	Mann	
269	Kim	Lorenz	
	William &		
270	Katherine	Binder	
271	Knut	Beyer-Olsen	
272	Nick	Coluccio	
273	David	Butterfield	
274	Roberta	Martinez-Banks	
275	Morris	Hasson	
276	Lori	Lake	
277	Juanita	Isaac	
278	Kelly	Bloom	
279	Steve	Altmeyer	
280	Paul	Santulli	
281	Richard	Lomas	
282	Lawrence	Kahn	
283	Frances	Staub	
284	John	Pietromonaco	
285	Charles	Caplan	
286	Frank	Kalberer	
287	Rudy	Cologna	
288	janine	Johnston	
289	Charalyn	Ferrel	
290	Ross	Anderson	
291	Linda	Tilford	
292	Robin	Negrin	
293	Jeff	Hoyt	& Pamela Ellison
294	Paride	DeGiulio	
295	Virgil & Shirley	Fassio	
296	Rosalyn	Smith	
297	Anne	Vadino	
298	Shirley	Nyquist	
299	Dorie & James	Pipers	
300	John	Raber	
301	Patricia	Sheppard	
302	John	Thomas	
303	Lynette	Jones-Baucke	
304	Martin	Magi	
305	Tom	Anderson	
306	George	Bagley	

307	Edward	Newcomb	
308	Richard	Shepard	Jr
309	Robert	Woo	
310	Alice	Schoos	
311	Noanie	Morrison	
394	Ronald	Bloom	
395	Connie	Salvatori	
400	Steven	Hazlerig	
403	Ellen	Kampel	
404	Ming-Hsing	Chi	
405	Daryl	McQuilkin	
406	Brad	Thorson	
407	David	Ray	
408	Julie	Kamins	
409	Howard	Neff	
410	Joanne	Moe	
411	Steven	Cole	
412	Eileen	Pratt	
413	Catherine	Coulson	
414	Lynne	Clark	
415	Suzanne	Albrecht	
416	Anna	Wong	
417	Vivian	Cotten	
418	Francis	Waterhouse	
419	Philip	Fordyce	
420	Dale	Razee	
421	Richard	Line	
422	Marvin	Titterud	
423	Dorothy	Titterud	
424	Kenneth	Lombardo	
425	D	Mayo	
426	Chi	Hsiao	
427	Stephen	Faloon	
428	Miriam	Faloon	
429	Donald	Williams	
430	Paul	Hoglund	
431	Stephen	Tilford	
432	Dora	Chin	
433	Mark	Spatz	
434	Ross	Vontver	
435	Susan	Kuenster	

436	Roy	Cline
437	Jennifer	Harper
438	Brett	Brinton
439	David	Bauer
440	Kathleen	Bauer
441	Lee	Hwang
442	Charlie	Sadoski
478	David	Cuttrill
479	Daniel	Rolcik
480	Diane	Rolcik
485	Cynthia	Whiteside
486	Jenny	Kay
487	Kevin	Kay
488	David	Salman
489	Joseph	Gaskins
490	Bruce	Burwell
491	Philip	Salvatori
495	Mike	Hurley
497	Tony	Marrese
499	Mary	Cugini
504	Judy	Lundberg
505	A	Machnicki
506	Melissa	Wolf
507	K Diane & Richard	Haelsj
508	Nancy	Anderson
509	Brian	Whiteside
510	Ronald	May
514	Skip	Dupar
530	Kathleen	Bockman
531	Lane	Bockman
532	Theresa	Clark
533	Thomas	Macnamara
534	Jon	Tellefson
535	Aiko	Suganuma
536	Kenneth	Moore
537	John David	Robblee
538	Anne	Robblee
439	Shannon Autumn	Fowler
540	Sue	Pruner
555	Dolores	Gibson
557	Jim	Kuistfield

558	John	Bolinger	
589	Lois	Patterson	
591	Shawn	Meeks	
592	Lee	Horman	
593	Patrick & January	Colacurcio	
615	Clark	Olsen	
616	Charles	Hall	
617	Elizabeth	Salvo	
618	Kelly Jo	Dair	
391	David	Fluke	
622	Robert	Metzger	
623	Stefan	Wikstrom	
624	Kim	Wold	
636	Patricia	McPhail	
646	John	Hardwick	
649	Robert	Stewart	
653	Lisa	Blizzard	
654	Mike	Holmes	
659	Jack	Brundags	
660	Barry	Mattaini	
662	Nancy	Mattaini	
663	Diane	McDonald	
664	Wenona	Strafford	
711	Don	Kirshner	
712	Jean	Wilson	
713	Alice	Hilf	
	Charles	Hilf	
714	Marc	Kriz	
715	Laurie	Leaverton	
		Leaverton	
716	Kim	Hemingway	
717	Dewey	Bloclar	
718	Ronald	Jack	
719	Paul	Cressman	Jr
708	Marian	Strutynski	
709	Patti	Klink	
710	Gerald	Johnston	

Ohop Lake

98	Robert	Kimball	
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Organizations

7	Avista Utilities
695	GreenLaw Advocacy
696	Washington Toxics Coalition
685	Northwest Marine Trade Association
33	Seattle Yacht Club
693	People for Puget Sound
699	The Nature Conservancy
388	Friends of Portage Bay
694	Black Hills Audubon Society
161	Association of Independent Moorages

Pesticide Applicators

3	Terry	McNabb
4	Thomas	Wimpy
668	Douglas	Dorling
701	Walden	Haines

Protect Washington Lakes From Pesticides

47	Amy Dudow
48	Barbara Jurgens
49	Betsy Pendergast
50	Betsy Pendergast
51	Beverly Carroll
	Biff Michael
52	Appia
53	Bruce Reed
54	Chris Stay
55	David Gladstone
56	David Griffin
57	David H. Jones
58	David Habib
59	David Lerner
60	Dawn Misawic
61	Denee Caterson
62	Donna Yancey
63	Douglas Keller
64	Earnest Thompson
65	Edward Hueneke
66	Greg Gille
67	Ilse Burch

68	Jamie Donatuto
69	Jane Paige
70	Jeanne Heuer
71	Jennifer Blomgren
72	Jennifer Myers
73	Jennifer Rosario
74	Jill Timm
75	Karen Monise
76	Kathryn Bubelis
78	Kylie Loynd
79	Lawrence Fosnick Davis
80	Lennon Bronsema
81	Linda Shepherd
82	Linda Thorson
83	Louis Richard
84	Margaret Allman
85	Maria Butler
86	Marilyn Giltner
89	Michael Fenton
90	Michael Kovacs
91	Nancy Watson
92	Nelson Cone
93	Pamela M. Engler
94	Patti Warden
95	Peter Roth
96	Ravi Grover
97	Richard Kirchhoff
99	Robert MacDonald
100	Ryan Liptak
101	Scott Burns
102	Seana Blake
104	Sherri Blevins
105	Sherry Chavoya
107	Susinn MacMerchys
108	Teresa Hopkins
109	Timothy Coleman
110	Tracy Ouellette
111	Virginia Wyatt
112	Willa Halperin
113	Zimryah Barnes
114	Sandra Emerson

115	Sherry Johnson
116	Stonewall Bird
117	Vafa Ghazi
118	Brenda Walker
119	Claire Mikalson
120	Desmond Machuca
121	Dorothy Swarts
122	Ileen O'Leary
123	Kathy Black
124	Linda York
125	Michelle Gaither
160	Rosemary Harrell
162	Casey Dillon
163	Anne Clarke
164	Bonnie Miller
165	Elaine Gowell
166	Eldon Ball
167	Greg Parry
168	John Vinson
378	John Vinson
379	Lorraine Wilde
380	Louise/ Edward Gilman/ Anderson
381	Lynn Ledgerwood
382	Patricia Rodgers
383	Renny Reep
384	Robin Cherney
392	Rosyln Regudon
467	Kami McKinzey
469	Melissa Anderson
470	Alexandra Sipiora
471	Kristin Tremoulet
472	Sarah Spotts
627	Kimberly Ryseff
679	Janet Hinrichs
682	Jenny Hayes
687	Sandra Emerson
689	Don R Paladin

Sylvia Lake

6	Sylvia Lake Community Club
133	William Higday

312	Richard	Sur
313	Jeff	Sacha
314	E C	Layne
315	Linda	Curtis
316	Robin	Koch
317	Tim	O'Brien
318	Edith	Gudoes
319	Helmut	Anches
320	Jeanne	Williams
321	Robert	Schneider
322	Judy	Matheusen
323	Paul	Howell
324	Lyann	Howell
325	Susan	Davis
326	Jeff	Gorden
327	Rebecca	Small
328	J S	Sll
329	Mark	Donaldson
330	Nicole	Donaldson
331	Robert	Boardway
332	Donald	Montague
333	Robert	Bonberg
334	Evelyn	Moore
335	Kourtney	Ott
336	Jeff	Vincent
337	(Unreadable)	
338	Renee	Carter
339	Bruce	Cour
340	(Unreadable)	
341	Bonny	Montgue
342	Carlos	Delgago
343	(Unreadable)	
344	S	Thumblar
345	Glenda	Yolob
346	Robert	Riggles
347	Charles	O Nels III
348	Rhea	Miles
349	Gordon	Goleb
350	(Unreadable)	
351	Paul	Manto
352	Robert	Berger

353	Arthur	Brush
354	Naomi	Hal
355	(Unreadable)	
356	Curt	Oland
357	Sheri	Busey
358	Kelly	Baer
359	Corinne	Lynn
360	William	Higday
361	Patricia	Higday
362	Linda	Warren
363	Orval	Warren
364	Todd	Dempowoy
365	Jennifer	Robem
366	H Rosanne	Dallace
367	Keith	Vanderwelt
368	Susan	Breg
369	David	Frank
	Steve & Mary	
370	Anne	Bodgett
371	Lucinda	Saunders
372	Barbara	Bowle

Trails End Lake

19	Frank	Savage
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